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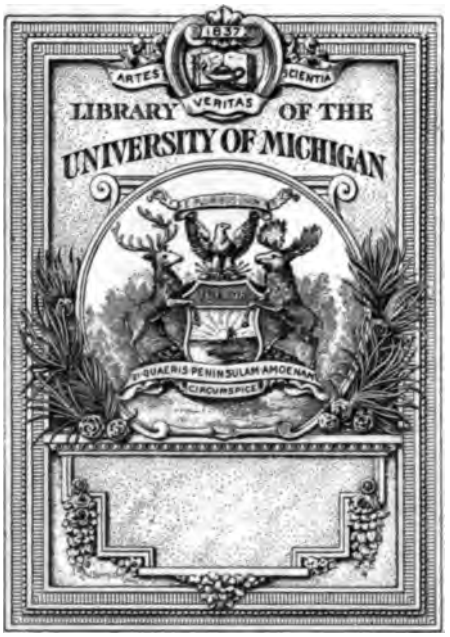

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REPORT OF THE SECRETARY OF AGRICULTURE

ON

THE SOUTHERN APPALACHIAN AND WHITE MOUNTAIN WATERSHEDS

COMMERCIAL IMPORTANCE, AREA, CONDITION, ADVISABILITY OF THEIR PURCHASE FOR NATIONAL FORESTS, AND PROBABLE COST

DECEMBER 11, 1907.—Referred to the Committee on Agriculture and Forestry and ordered to be printed with illustrations

WASHINGTON : GOVERNMENT PRINTING OFFICE
1908

LETTER OF TRANSMITTAL.

DEPARTMENT OF AGRICULTURE,
OFFICE OF THE SECRETARY,
Washington, December 11, 1907.

SIR: I have the honor to transmit herewith, in compliance with the provision in the act making appropriations for the United States Department of Agriculture for the fiscal year ending June 30, 1908, a report on the Southern Appalachian and White Mountain Watersheds.

Very respectfully,

JAMES WILSON,
Secretary.

The PRESIDENT OF THE SENATE.

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Report of the Secretary of Agriculture

on the

Southern Appalachian and White Mountain Watersheds.

INTRODUCTION.

The agricultural appropriation bill approved March 4, 1907, requires the Secretary of Agriculture to investigate the watersheds of the Southern Appalachian and White Mountains "and to report to Congress the area and natural conditions of said watersheds, the price at which the same can be purchased by the Government, and the advisability of the Government purchasing and setting apart the same as national forest reserves for the purpose of conserving and regulating the water supply and flow of said streams in the interest of agriculture, water power, and navigation."

I have endeavored to have completed all investigations necessary to give Congress the information desired.

Each one of the several problems involved has been handled by the most competent men whose services could be secured. The Forest Service detailed to the work several of its most experienced experts. The Bureau of Soils, after careful field study, has submitted information on soils and agricultural possibilities of the Southern Appalachian region. The Geological Survey of the Interior Department has made available the results of seven years of investigation of water power and navigation conditions of Southern Appalachian streams. Desirous of securing the most competent authority on every phase of the question, I have gone outside of the Government service to secure from Prof. L. C. Glenn, of Vanderbilt University, of Nashville, Tenn., the results of a three years' study of soil erosion in the Southern Appalachians, and from Mr. Philip W. Ayres, of the Society for the Protection of New Hampshire Forests, a report on the commercial importance of the White Mountains.

Approaching their subjects from different points of view, these men without a single exception have arrived at results which lead irresistibly to these conclusions, namely, that the Southern Appalachians and White Mountains are of vast commercial importance to the industries of the country; that the good or evil influence of these regions in an unusual degree depends upon the treatment given them, and that both are encountering well-advanced destructive influences, which, unchecked, will bring widespread devastation to the regions themselves and ruin to many of the industries of this country.

Therefore, in this report I desire to repeat and strongly emphasize my recommendation of six years ago, that the National Government undertake the purchase of a definite portion of these mountain forest lands, in order that they may, through use as national forests, be protected and improved. My former recommendation applied only to the Blue Ridge and Great Smoky Mountains. I am convinced now that the Government should extend its purchases to the Southern Allegheny and the Cumberland Mountains and to the White Mountains also.

A great opportunity presented itself to the Government in the purchase of these lands seven or eight years ago. The influences which are destroying the mountains were not then so far advanced. Virgin hardwood timber lands existed in large areas and could have been bought at from $1 to $5 per acre. Within the past eight years we have crossed the threshold of a hardwood timber famine, and in consequence the prices of such virgin hardwood lands as remain have advanced from 300 to 500 per cent.

It will be the wisest course under present conditions for the Government to purchase cut-over rather than virgin lands. Even cut-over lands with no prospect of a timber crop inside of ten or twenty years will cost as much now as virgin lands ready for the saw would have cost eight years ago. Barren and eroded lands, of which there is a greater area now, will cost no more to-day than in the past. But considering the expense of planting timber on them and the time before returns can be secured they become the most costly class of lands that can be purchased.

That the two regions under consideration are advancing toward a condition of barrenness and sterility is the conclusion of every man who has had a part in this investigation. I do not refer to the loss merely of commercial timber. I mean absolute barrenness and sterility—without timber, without undergrowth, without soil. In 1896 Prof. N. S. Shaler, of Harvard University, said:

> South of Pennsylvania there is, according to my reckoning based on observations in every State in that upland country, an aggregate area of not less than 3,000 square miles where the soil has been destroyed by the complete removal of the woods and the consequent passage of the earthy matter to the lowlands and to the sea. At the rate at which this process is now going on the loss in arable and forestable land may fairly be reckoned at not less than 100 square miles per annum. In other words, we are each year losing to the uses of man, through unnecessary destruction, a productive capacity which may be estimated as sufficient to sustain a population of a thousand people.

This rate has not only been kept up; it has been greatly accelerated. Faster than was considered possible eleven years ago these regions, through injudicious cutting, fires, clearing, and general misappropriation, are moving toward a forestless, soilless condition.

If we wait till forest and soil are gone before beginning a sound policy of handling these mountains, we shall invite the bitter experience of France, who at infinite pains and an expenditure of $40,000,000 is endeavoring to restore both soil and forest to her mountains after a course of destruction such as ours at present.

How the destruction of the Appalachian forests, north and south, means far-reaching damage to the country is pointed out in this report. The Appalachians must be almost the sole dependence for the nation's future hardwood supply. If this supply fails, the hardwood-using industries of the country must fail, and the entire

country be in want of hardwood materials which in the past it has had in great variety and abundance. The streams of the Appalachians are of enormous value to the nation for water power and navigation. If the forests are removed from the mountains, this value will be reduced to a fraction, because the soil from the denuded watersheds will so rapidly fill reservoirs and channels that even the resources of the Government itself will be insufficient to keep them clear.

That some special means must be taken to protect the resources of these mountains no reasonable man after a full study of the situation is likely to deny. The time to begin is now. Every year that action is deferred the conditions are made worse and the cost of reclamation becomes commensurately greater. The undertaking is so immense that the National Government can not be expected to assume it alone. Important action must be taken by the States directly concerned, and extensive cooperation must be had with individual landowners of the region. It is the duty of the Government to undertake a part of the work and to do it without delay, in order that by example and influence it may lead the way to the more rational treatment of these regions and their resources.

In this report it is pointed out how far, in my opinion, it will be necessary for the Government to go and what the cost will be. I have also indicated the action which it seems necessary for the several States to take, and have suggested a basis for securing the cooperation of individual landowners. All three—Government, State, and individual—must, it seems to me, participate in the movement.

As a result of the work done under the special appropriation, several reports are being published which show how the commercial importance of these regions depends upon keeping their forests under systematic control. The water resources branch of the Geological Survey, under the direction of Mr. M. O. Leighton, has prepared two reports, one on the Relation of the Southern Appalachian Mountains to the Development of Water Power, the other on the Relation of the Southern Appalachian Mountains to Inland Water Navigation. The report of Mr. Philip W. Ayres, already referred to, on the Commercial Importance of the White Mountains, is being published. Mr. William L. Hall, of the Forest Service, has published a report on The Waning Hardwood Supply and the Appalachian Forests. All of these papers are respectfully brought to the attention of Congress as containing in large part the data which form the basis of the conclusions and recommendations of this report.

IMPORTANCE OF APPALACHIAN FORESTS FOR HARDWOOD SUPPLY.

The future hardwood supply hinges on the control of the Appalachian Mountains. This is shown in Circular 116 of the Forest Service, on The Waning Hardwood Supply and the Appalachian Forests. To briefly summarize the reasons, the hardwood lumber cut of the country has fallen off over 15 per cent in the last seven years, and this decrease took place at a time when the industries made unprecedented demands upon every kind of structural material. The output of pig iron increased 86 per cent, that of cement 229 per cent,

and that of softwood lumber nearly 16 per cent. During the same period the wholesale prices of all classes of hardwood lumber advanced from 25 to 65 per cent. Almost every kind of hardwood has been put on the market, and hardwood is now being cut in every State and in almost every locality where it is found. All possible substitutes are being put into requisition. The demand is stronger than ever, but the supply is falling off. A notable shrinkage has occurred in some of the most popular woods, as shown by the following table:

TABLE 1.—*The cut of hardwood lumber, by kinds, 1899 and 1906.*

Wood.	1899.	1906.	Increase (+) or decrease (−).
	Thousand feet.	*Thousand feet.*	*Per cent.*
Oak	4,438,027	2,820,393	− 36.5
Maple	633,466	882,878	+ 39.4
Poplar	1,115,242	693,076	− 37.9
Red gum	285,417	453,678	+ 59.0
Chestnut	206,688	407,379	+ 97.1
Basswood	308,069	376,838	+ 22.3
Birch	132,601	370,432	+179.4
Cottonwood	415,124	263,996	− 36.4
Beech	(a)	275,661	.....
Elm	456,731	224,795	− 50.8
Ash	269,120	214,460	− 20.3
Hickory	96,636	148,212	+ 53.4
Tupelo	(a)	47,882	.....
Walnut	38,681	48,174	+ 24.5
Sycamore	29,715	.....	.....
All others	208,504	87,637	− 58.0
Total	8,634,021	7,315,491	− 15.3

a Not separately reported.

Oak, which in 1899 furnished more than half the entire output of hardwood lumber, has fallen off 36.5 per cent. Yellow poplar, which in 1899 ranked second among the hardwoods of the country, fell off 37.9. Elm, the great standard in slack cooperage, went down 50.8 per cent. Cottonwood and ash, used largely in many industries, lost, respectively, 36.4 and 20.3 per cent. Of the woods which show increases, hickory and walnut are cut scatteringly over a very large territory. The increases shown are probably in large part, if not entirely, due to more complete figures in 1906 than in 1899. The other woods which show increases are those which up to a few years ago were considered so inferior that they had no market value. Only within the past seven years have maple, red gum, birch, beech and tupelo begun to replace the better woods, such as oak, poplar, elm, and ash. When the inferior substitutes are gone there will be nothing with which to replace them.

While we know the hardwood supply is rapidly running down, it is unfortunate that we can not tell how long the supply will last. The hardwood which annually goes into the manufacture of lumber is approximately 7½ billion feet. Other uses, such as railroad ties, poles, piles, fence posts, fuel, and the vast amount of waste bring the figure to at least 25 billion feet. By the largest estimate our supply of standing hardwoods does not exceed 400 billion feet. This means a sixteen years' supply.

How intensely the whole country would feel the loss of a great resource like hardwood timber was merely indicated by the injurious effects of the anthracite coal strike a few years ago. Many of our great industries, such as furniture, vehicle, and cooperage manufacture, depend absolutely upon hardwood. These industries will fail with the hardwood supply. Not only will they fail, the whole country will suffer for want of their products. Our present national forests furnish no hardwood timber because hardwoods grow only in the East.

There have been in the United States four great hardwood centers—the Ohio Valley, the Lake States, the lower Mississippi Valley, and the Appalachian States. The Ohio Valley in the past has been the main center of production. Even as late as 1899, the States of Ohio, Illinois, and Indiana produced 25 per cent of the hardwood. In 1906, they produced only 14 per cent; both the States of Ohio and Indiana fell off over 50 per cent. They have reached a sudden end as great hardwood producers. Their many hardwood-using establishments which are now pressed for supplies will largely exhaust their remaining remnants within a few years. The lands from which the timber was cut have been cleared and turned into farming, for which in large part they are well adapted.

The three Lake States furnished less hardwood lumber in 1906 than they did in 1899. Unquestionably their maximum production has been reached, and their decline is likely to be almost as rapid as that of Ohio and Indiana, because of the nearness of many wood-using industries which will make heavy demands upon their supplies. The hardwood lands of the Lake States are for the most part agricultural lands, and they are rapidly being cleared for the production of grain, grasses, and potatoes.

The same is true of the lower Mississippi Valley. The hardwoods occupy the richest agricultural land which, almost as fast as the timber is cut, is being turned into farms. Present indications are that the swamp land, notable for the production of hardwoods, will within a few years be drained and cleared for agriculture.

This leaves but one other hardwood region—the Appalachian Mountains. The Appalachians differ fundamentally from the other regions because they are not of agricultural value; their main usefulness is for timber production. In 1906 they produced 48 per cent of the hardwoods of the country. It is clear that they must be counted upon for even a much larger proportion in the future. Although they bear hemlock, pine, and spruce in quantity, it is in the production of hardwoods that the Appalachians have their chief value. It is to them that the hardwood-using industries must look for future supplies, and even with the Appalachians the country has only a sixteen years' supply now available for the ax.

The Southern Appalachian region contains a timbered area of over 58 million acres. Including the mountains of Pennsylvania, New York, and New England, it is safe to estimate the Appalachian area as covering 75 million acres primarily adapted to hardwood timber. Only a small part of this—12 to 15 per cent—is covered by virgin growth. The remainder has been cut over, and some of it has been cleared.

Throughout the Appalachian region the forest has suffered incalculable damage by fire, which over most of the region still burns

without hindrance. Every year millions of young trees, the hope of the future crop, are killed and the humus, the great storehouse of fertility and moisture, is consumed over thousands of acres. Through mismanagement a great part of the young timber has been destroyed. Much that remains is damaged by fire, insects, or fungi. Over the whole area the average growth is very little, probably not more than 10 cubic feet per acre annually.

The inevitable conclusion is that there are lean years close ahead in the use of hardwood timber. There is sure to be a gap between the supply which exists and the supply which will have to be provided. How large that gap will be depends upon how soon and how effectively we begin to make provision for the future supply. The present indications are that in spite of the best we can do there will be a shortage of hardwoods running through at least fifteen years. How acute that shortage may become and how serious a check it will put upon the industries concerned can not now be foretold. That it will strike at the very foundation of some of the country's most important industries is unquestionable. This much is true beyond doubt, that the hardwood timber famine is upon us and we have made no provision against it.

Studies of the forest conditions in the Southern Appalachians show that these lands, where they have been under protection for some time, are capable of producing an average of 50 cubic feet of wood per acre annually. Even taking the production at 40 cubic feet, this means for the area of 75 million acres a possible annual production of about 3 billion cubic feet, which is about equal to the present consumption of hardwood timber for all purposes. Since the Appalachians at present supply only 48 per cent of our hardwood, and since other regions will continue to furnish some, it is likely that the proportion from the Appalachians will never exceed 75 per cent. This allows a margin of safety of 25 per cent if we assume that there will be no increase over the present rate of consumption. If the Appalachian forests are taken soon enough and rightly handled they will eventually produce continuously three-fourths of the hardwood supply of the country, and do it without exhausting the forests. In fact, it can be done in such a way as to improve the forest.

Our experience will doubtless be the same in this respect as that of Germany. In Saxony the cut, which represents only the growth, increased 55 per cent during the period from 1820 to 1904, bringing the annual yield to 93 cubic feet per acre. Prussia shows a still more pronounced increase. In 1830 the cut was only 20 cubic feet per acre, and in 1865 had increased to only 24 cubic feet. But in 1890, owing to proper management, it had risen to 52, and in 1904 to 65 cubic feet. These results came largely from nonagricultural lands, sandy plains, swamps, and rough mountain slopes, and from forests which had been mismanaged, much the same as ours. Under right management an equal increase may be expected from Appalachian forests. To this increase of yield we must look to meet the increase which is certain to come in demand.

IMPORTANCE OF SOUTHERN APPALACHIANS AND WHITE MOUNTAINS FOR WATER POWER.

The amount of water power in the Southern Appalachians frequently has been guessed at. The Geological Survey has been measuring the streams for seven years, and its report on the Relation of the Southern Appalachian Mountains to the Development of Water Power presents facts concerning the remarkable asset the nation has in the water resources of this region. Based on the lowest two weeks of the year an average for seven years shows that the streams afford 2,700,000 horsepower. This much power would be available the year round. In common practice it is found profitable to develop a water power to the minimum of the four high-water months of the year, depending upon steam power during low-water season to make up the deficiency. In order to be conservative in this estimate the time limit has been made six months. No streams or portions of streams were considered that did not flow out of the Southern Appalachians. No streams with less than 500 horsepower were considered. In all calculations only 90 per cent of the observed fall and 80 per cent of the energy of the falling water is used. Moreover, three important streams—the Big Sandy, the Cumberland, and the Kentucky—are not included. With these allowances and omissions the minimum power for the year and for the six high-water months is as follows:

TABLE 2.—*Minimum horsepower of Southern Appalachian streams.*

Stream.	Horsepower.	
	Minimum for the year.	Minimum for six high-water months.
Potomac	131,800	349,556
James	155,000	236,474
Roanoke	131,000	215,709
Peedee	167,800	256,945
Santee	319,590	472,006
Savannah	209,000	314,600
Chattahoochee	145,000	228,800
Coosa	104,580	177,880
Monongahela	58,900	235,715
Great Kanawha	335,000	853,420
Tennessee	973,600	1,589,474
Total	2,740,700	4,929,573

The above table shows the power available under present conditions. Development of the storage facilities of the various streams would increase the minimum from three to thirty times, depending upon the stream.

It is estimated by the Geological Survey that at least 50 per cent of the indicated minimum horsepower, and probably much more, is available for economic development. On this basis the rental of 1,350,000 horsepower at $20 per annum is worth $27,000,000 per year. If we take in the same way 50 per cent of the power which is present for half the year we increase this sum by $11,000,000, bringing the total to $38,000,000.

Until a few years ago scarcely any of this power was utilized.

Since 1900, with an increase in population of about 2,400,000, or something more than 10 per cent, the South has increased the value of its farm products by $728,000,000, or 57 per cent, and the value of its manufactures $761,000,000, or 52 per cent. It has added 3,493,000 spindles to its cotton-mill outfit, an increase of 55 per cent, and its mills used in 1906 about 2,375,000 bales of American cotton, or 48 per cent more than in 1900. In the six years the South's annual pig-iron production has increased by 896,000 tons, or 34 per cent; its coal production by 34,202,000 tons, or 69 per cent; the value of exports at its ports $177,000,000, or 38 per cent. In that time its railroad mileage has increased by 11,441 miles, or nearly 22 per cent, and the assessed value of property by $2,490,000,000, or nearly 48 per cent. [Manufacturer's Record.]

This showing is not made by the South alone. It represents the results of capital from all parts of the country applied to the development of the resources of the South. It is therefore national, not local, development.

Coincidental with this industrial advance has come about a strong demand for electricity generated by water power. Electric development plants have sprung up on nearly all streams, and in great numbers on those flowing through the Piedmont Plateau. While relatively little of the nearly 5,000,000 horsepower is as yet utilized, its utilization is increasing at a marvelous rate.

Ready power to the value of $38,000,000 will give the country tremendous advantage, not alone in manufacturing, but in transportation, in lighting, and in every kind of development. Water power is especially valuable to those sections which have no deposits of coal, and its advantages will steadily enhance in the future as the supply of coal grows scarcer and the price correspondingly higher.

On the great watersheds forming the White Mountain region the four most important streams of New England have their rise. Upon them are located the great cotton, woolen, and paper mills of New England. They abound in fine water power, only a part of which is now utilized. It has been estimated that the capital invested in the manufacturing enterprises which utilize the power of these streams amounts to $250,000,000. Important and flourishing cities have grown up in consequence of these industries. Bellows Falls, in Vermont; Manchester and Berlin, in New Hampshire; Holyoke, Lowell, and Lawrence, in Massachusetts; and Biddeford, Brunswick, and Lewiston, in Maine, are representatives of such cities, ranging in population from 10,000 to 150,000.

The Connecticut River, the largest of New England streams, rises in the Connecticut Lakes of northern New Hampshire. It forms the boundary between Vermont and New Hampshire for 180 miles and flows across Massachusetts and Connecticut for 120 miles. Its drainage basin includes 10,924 square miles, of which nearly one-fourth lies in New Hampshire and one-tenth in the White Mountains. The White Mountains portion of its watershed averages nearly 4,000 feet in elevation, including portions of the great Presidential and Franconia ranges. Their slopes are steep and rocky, without large lakes or swamps, and with only the forest to retard the run-off. Water power in the upper stream is developed chiefly at Fifteen Mile Falls and McIndoe Falls on the main river and at Littleton and Lisbon on the Ammonoosuc. Below McIndoe Falls are long reaches of smooth water broken at Bellows Falls, Turners Falls, Holyoke, Windsor Locks, and three other points by falls having an average aggregate

during ten months of the year of 120,000 horsepower. Less than half is utilized.

In very low water the power is reduced nearly one-half, so that but a small margin remains over the amount required for daily use. At Holyoke, Mass., the margin is frequently so small as to require the most careful use of water to make the supply meet the needs. The census of 1880 reported for the Connecticut and all of its tributaries 2,298 mills using 118,026 horsepower developed from the streams. It is estimated that these figures have since been increased by about 20 per cent, making the present total over 140,000 horsepower.

The Merrimac River is undoubtedly the most notable water-power stream for its length in the United States. Between Franklin and Newburyport, a distance of 110 miles, it has a fall of 269 feet, of which 185 feet is developed, representing approximately 50,000 net horsepower. Of the remaining 84 feet, it is believed that less than half can be utilized. Probably the total development in the main stream will not exceed 60,000 horsepower. Its great water powers are at Manchester, N. H., and Lowell and Lawrence, Mass. On the tributaries of the Merrimac valuable powers also exist. Those at Franklin on the Winnepesaukee are equal in value to some on the main stream. The Merrimac is formed by the Pemigewasset and Winnepesaukee rivers. The latter has its source in the lake of the same name, while the former rises in the Franconia Notch of the White Mountains and drains a large area of high, mountainous country. Since the Pemigewasset has no lakes or swamps to conserve its waters, it depends upon the forest cover alone for its regularity of flow.

The Saco River rises in Crawford Notch, in the heart of the White Mountains, and drains a larger proportion of the principal ranges than any other stream. None of its tributary streams from the mountains have lakes to restrain their waters, though, like the Merrimac at its lower levels, it is the outlet of important lakes. Toward its headwaters the Saco is variable in its flow and has no important water powers, but on its lower reaches in Maine its flow is broken at six places by falls, affording water power of a high value. At Saco and Biddeford, at Union and Salmon Falls, and at Bar Mills fine water power exists, a large part of which is utilized. At Hiram, 45 miles from the sea, is found the most extensive power on the river. The Saco, while its possibilities are great, is more dependent upon the forest cover for the evenness of its flow than any other river having its source in the White Mountains.

The Androscoggin River has a drainage basin with a higher general elevation and a larger lake system than any other New England stream. It is formed by the union of Magalloway River and the outlet of Umbagog Lake, at Errol, N. H. At its headwaters is the magnificent system of Rangeley Lakes, the outlet of which is controlled by dams. The flow of the upper river is therefore very uniform.

Farther down its course the Androscoggin receives the drainage of the northern part of the principal ranges of the White Mountains through Peabody and Moose rivers. On this part of its drainage there are no lakes of importance. The water powers of the Andros-

coggin are centered at Berlin, N. H., and Rumford Falls, Livermore Falls, Lewiston. and Brunswick, Me. In the 167 miles between tide water and Umbagog Lake there is a fall of 1,235 feet, of which 610 feet is used, corresponding to about 120,000 net horsepower. Of the remaining 625 feet, possibly two-thirds can be utilized, corresponding to 60,000 net horsepower, and bringing the total to about 180,000 horsepower, or approximately three times that of the Merrimac without its tributaries.

The streams of the White Mountains, therefore, furnish power for great industries, and are the basis of development for many prosperous cities in all the New England States but one. These streams are all influenced vitally in flow by the forest which covers the slopes of the White Mountains.

APPALACHIAN MOUNTAINS IMPORTANT TO NAVIGATION.

Timber supply and water power are not the only factors which make the Appalachian Mountains commercially important. All the water gathered by the Southern Appalachian and White Mountains flows to the sea through navigable rivers. With greater elevation than other parts of the watersheds the mountains receive much more rainfall, and with their cooler climate the evaporation is less; hence there is more water to be discharged. Because of the precipitous slopes of the mountains the run-off is far more rapid than in other sections. To this must be added the fact that in the Southern Appalachians there are no natural lakes to gather the flood waters and equalize the flow of streams. There are thus two powerful influences contributing to an extremely heavy discharge from these mountains, and two more contributing to an extremely rapid run-off. Combined, these tend to produce great variability in the flow of all streams which have a large part of their watersheds in the mountains.

A large regular discharge coming from springs is desirable, a variable surface run-off is bad from every point of view, and so far as possible should be remedied. The variability of the present flow of Southern Appalachian streams is so great that though the average volume would make the streams constantly navigable, they are at extreme flood during a few weeks of the year and at extreme low water during a much longer period. Their low-water stage causes interference and loss to business through the cessation of navigation; their high-water stage often entails damage and loss from floods.

There is but one natural factor which tends to equalize the flow of Southern Appalachian streams—the forest. In one continuous mantle, covering ridges, slopes, and coves, it has for untold ages been nature's sole reliance for the proper distribution of rainfall. If storm and deluge came, the downpour fell upon a foot-deep layer of humus, which readily received many times its own weight of water before it allowed any to escape. When filled, it passed on the excess to a soil made porous by myriads of penetrating roots and countless tons of vegetable mold. If drought came, it found the humus and soil filled as a reservoir with water for the steady supply of springs and streams through weeks or months of rainless weather.

The original forest, then, with its characteristic conditions of shade, undergrowth, humus, and soil, was an effectual distributer of moisture.

It was as efficient as would have been a system of lakes. It had power to hold back the water on a steep mountain side almost as though the ground were level. Thus, in a great measure, it equalized all influences which contributed to the variability of the run-off.

This balance of conditions began to be disturbed when the forest was cleared from great areas of foothill land. It has become strongly disarranged since the clearing has extended far up the mountains and since the forest has been opened by cutting and the humus consumed by fire over almost the entire area.

In view of the fact that over large areas of the upper watersheds of the Southern Appalachian streams the forest can never be restored, the possibilities of artificial storage become important. In the report of the Geological Survey on Relation of Southern Appalachian Mountains to Inland Water Navigation data are presented for each navigable stream to show the available reservoir sites, the amount of water which can be stored, and the effect of such stored water on the minimum river stage for specified periods. The data for some streams show that remarkable results can be accomplished. As a striking example one may consider the Savannah, which during the greater part of the year is navigable for steamboats drawing from 4 to 5 feet of water, but during low-water seasons there are various shoals in the upper part of the river with a depth of not over 3 feet. In pursuance of the plan of improvement outlined by the Chief of Engineers, United States Army, the United States had expended in the improvement of this river up to June 30, 1905, the sum of $517,643, of which $58,935 was expended above Augusta. The estimate of cost to complete the project is $645,045. Expenditures on the upper portion of the river have now been suspended on the ground that the permanent improvement of this portion would involve an expenditure out of proportion to the prospective commercial benefits.

Considering this condition, it is of interest to note what can be done by means of a storage system on this river. Topographic surveys have located 14 reservoir sites, which, if developed, would have a capacity equal to the annual run-off of 1,670 square miles of drainage area, or 23 per cent of the drainage area above Augusta. With these reservoirs developed and filled, the amount of water which could be stored would be sufficient to maintain an added depth of 9 feet at Augusta for a period of 118 days, or practically four months. Even with the reservoirs half full at the beginning of the low-water season there would still be water enough to add 5 feet to the depth of the river for 130 days. The Savannah, already a river of great commercial importance, would have its commerce increased many fold if only a good navigable depth could be maintained at all seasons.

It is not pertinent here to consider whether at a future time it may be desirable to plan a general system of such reservoirs. It is important to point out that every reservoir developed for water power in the mountains or foothills helps conditions in the navigable courses of the streams. Owing to the great water-power development which is taking place, this aid is likely to be of considerable value in the future. When in addition to seeking improved conditions of navigation it is of equal or greater importance to control the floods, as in the Monongahela River, such work may become entirely feasible.

The Weather Bureau carefully investigated the damage along the Ohio River from the floods of January and March, 1907, and found that the property loss, not including damage to soil and river channel, amounted to $9,900,000, most of which was sustained by the city of Pittsburg. The report of the Geological Survey shows that the flow of 1,950 square miles, or 35 per cent of the drainage area of the Monongahela, can be stored for a full year, and that by such storage the low-water stage in the Monongahela can be increased by 6 feet throughout the longest dry-season period ever known in the history of the river. The measurements show that by the storage of this water in the Monongahela an increase of stage of 3 feet can be effected in the Ohio River at Wheeling for a period considerably longer than four months. This means a distinct improvement for both navigation and flood conditions. With 35 per cent of the Monongahela water subject to storage, the flood damage at Pittsburg and Wheeling would be almost eliminated. With the minimum stage of the Ohio at Wheeling increased by 3 feet, the coveted 9-foot stage between Pittsburg and Cincinnati would all but be secured.

The streams which drain the White Mountain region are all navigable in their lower courses. The Connecticut River is the most important for its commerce. Commerce in considerable volume is carried on from the mouth to Hartford, 30 miles, and small boats by way of the Windsor Locks may ascend as far as Holyoke, Mass. The Androscoggin, Kennebec, and Saco in their upper courses are used to a large extent for the driving of logs. The lower Kennebec supports an extensive ice traffic.

FOREST DETERMINES POSSIBILITIES OF WATER POWER AND ARTIFICIAL STORAGE.

The forest bears a vital relation to successful utilization of water power and effectual artificial storage. No matter what its purpose or design, any reservoir system developed in the Southern Appalachians is foredoomed to failure unless the watersheds which feed it are kept under forest. The present torrential discharge of the streams is due to the extent to which the forest has been cut away or damaged. The more this sole equalizing factor is lessened, the more extreme will be the floods on the one hand and low-water stages on the other. A mountain watershed denuded of its forest, with its surface hardened and baked by exposure, will discharge its fallen rain into the streams so quickly that overwhelming floods will descend in wet seasons. In discharging in this torrential way the water carries along great portions of the land itself. Deep gullies are washed in the fields, and the soil, sand, gravel, and stone are carried down the streams to points where the current slackens. The stone and gravel are likely to be dropped in the upper channel of the stream, to be rolled along by subsequent floods, but the sand and silt are carried down to the still water of the first reservoir, where they are deposited. It is this silting up that makes uncertain any reservoir system outside the limits of a forested watershed.

Since the extensive removal of the forest on the upper watersheds there has been a vast accumulation of silt, sand, and gravel in the upper stream courses. Examples of reservoirs completely filled are already to be seen on almost every stream. Removal of the silt is

usually impracticable. If sluiced out of the highest reservoir, it gathers in the next below, and so on through whatever system may have been developed. If, perchance, it should pass the last reservoir, the silt is then free for deposit in the navigable stretches of the stream.

Regardless of whether there are reservoirs, the ultimate deposit of the detritus is in the navigable sections, whence its removal can be accomplished only by a steam dredge at the expense of the Government.

In the degree that the forests are damaged on the high watersheds, then, inevitable damage results to water power and navigation through increased extremes of high and low water and through vast deposits of gravel, sand, and silt in the stream channels and in any rersevoir which may have been constructed.

CONDITIONS IN THE SOUTHERN APPALACHIAN MOUNTAINS.

The Southern Appalachian Mountains contain approximately 9,900,000 acres, having an elevation above 2,500 feet.

The Blue Ridge and Great Smoky Mountains consist of an elevated plateau walled in on its western margin by a higher mountain range and with numerous short ranges projecting above its general surface. In one of these, the Black Mountains, Mount Mitchell rises to 6,711 feet, the highest altitude east of the Rocky Mountains. The eastern edge of the plateau is formed partly by peaks rising above the general surface and partly by an abrupt descent that forms an escarpment overlooking the Piedmont Plateau. Over 40 peaks, including approximately 6,400 acres, have an altitude of over 6,000 feet, and 54,000 acres are above 5,000 feet. The ridges of these mountains are rounded, the slopes precipitous, and the valleys deep cut and narrow. In Virginia the Blue Ridge narrows to a single range of a few miles width, but retains its characteristic topography. It crosses the Potomac River at Harpers Ferry, extends through the State of Maryland, and merges into the Allegheny Mountains in southern Pennsylvania.

The Allegheny Mountains extend southward from Pennsylvania and form the mountainous part of West Virginia and that portion of Virginia lying near the West Virginia boundary. The highest peak of the Alleghenies is Spruce Knob, in Pendleton County, W. Va., 4,860 feet.

The Cumberland Mountains are simply the extension of the Alleghenies and are considered to begin at the northeast boundary of Kentucky. From this line they extend southwest through Kentucky, extreme western Virginia, Tennessee, and into northern Alabama. The Cumberlands are of less elevation than the Alleghenies. Their highest peak is Big Black Mountain, in Harlan County, Ky., which has a height of 4,100 feet.

EROSION.

The greater part of the Southern Appalachian region is underlain by rocks that weather into soils which are easily eroded when exposed on deforested slopes. Erosion varies in character on account of the different kinds of soil. In some places the entire surface rapidly wears away, each freshet removing a thin layer, so that the fertile soil is soon exhausted. The field is at last worn out and abandoned.

This kind of erosion occurs on close-grained, compact clay soils, the particles of which cling together firmly and resist the downward cutting of small currents of water.

Another type of erosion results in parallel gullies extending straight up and down the slopes. As these gullies grow deeper they widen, the smaller ones are obliterated by the larger until they become of huge size, their bottoms sharp, their sides steep, and their edges irregular and jagged. Such erosion results from clay soils of homogeneous texture and somewhat softer and more loamy than the type mentioned above. It is a very common type, and the process once started can be stopped only with great difficulty. It nearly always results in the early abandonment of the field on which it begins.

Of all types of erosion, that of gullying, in which rapid down-cutting is accompanied by undercutting and caving, is the most rapid in its progress and the most difficult to check, as well as the most destructive in its effects. This type occurs in soils of relatively soft micaceous subsoil. The surface may be a fairly compact clay that offers moderate resistance to water, but once broken a gully results in the soft subsoil. It rapidly deepens, the micaceous material on the sides is easily undermined and slips in, leaving vertical or overhanging walls. Into such gullies many square yards of soil may cave during a single heavy rain, and as the decomposed micaceous material is usually scores of feet in thickness such gullies frequently become chasms of great depth and width. This kind of erosion when started on cleared land may advance into a forested area and undermine even the largest trees. The rocks which produce soil subject to this kind of erosion are found over a large part of the Southern Appalachian region, and especially in the Blue Ridge Mountains.

Still another type of erosion is that started by small landslides, which occur on steep slopes when the soil is saturated during periods of prolonged rainfall. Such landslides are often started by the trampling of cattle over the steep slopes during wet weather. One animal in climbing up or down a slope may start a number of such slides, each of which usually grows in width and length and soon makes a great bare scar in the field.

The soils subject to serious erosion are very extensive in the Southern Appalachian region. Where on such soils nature has placed a forest that brings about a balance between rainfall and run-off, the danger in widespread clearing is obvious. The loss resulting from erosion means not only the loss of the soil from the fields; it means also the loss which has already been described in the failure of water power and navigation.

MINING.

While in the Blue Ridge and Great Smokies no valuable coal deposits are known to exist, these mountains have a great variety of mineral resources. Many of them have never been developed, while others have become the basis of important mining operations. Large investments have been made in the mining of copper, marble, mica, corundum, talc, asbestos, slate, kaolin, and other minerals, and the mineral products are said to amount to several million dollars annually.

Such mining as is carried on does not require large quantities of timber, since but a small part of it is underground mining, and some

of that which is underground is carried on in the ancient crystalline rocks, which do not require timbering. The influence of such mining upon the forests is not very important except in a few instances where great damage is done. The most pronounced example of injury by mining is at Ducktown, Tenn., where sulphur fumes from the roasting and smelting of copper ores have killed all vegetation for a number of miles around. The perfectly bare surface has eroded with wonderful rapidity. It is a striking illustration of the completeness of destruction that may result from erosion in this region when the protecting forest cover is once removed.

In the Alleghenies and Cumberlands the mining of coal overshadows all other mining operations. This is one of the richest coal fields of the United States. The great mines which have been developed require annually millions of feet of timber, and will continue to require great quantities so long as the coal supply lasts.

Coal mining does not necessarily conflict with the proper use of the forest. It requires the use of usually less than 10 per cent of the surface, and this generally in the valleys. All the rest can be kept in timber. Moreover, the ownership and control of the surface do not necessarily go with the control of the coal rights. In many cases the companies which work the mines control only enough of the surface to enable them to operate the collieries.

AGRICULTURAL POSSIBILITIES.

In the northern part of Virginia the Blue Ridge is composed of sandstone which gives rise to the DeKalb stony loam, for the most part a poor, thin, stony soil. The summits are rough, rocky, and sharp-crested, while the slopes are steep and rocky. Probably 95 per cent of this type is uncultivated, and is valuable only for the timber it supports. The Blue Ridge, with its outlier, Short Mountain, is well defined, and soils suited to agriculture come to its base. Immediately across the Potomac, in western Maryland, similar conditions prevail. Farther south, in Virginia, the Blue Ridge soils are much more productive, and it is only the steep upper portions that are unsuited to farming. These higher areas are so steep, rough, and rugged that they are adapted only to forestry.

In western North Carolina, east of the Blue Ridge, lies a succession of foothills with moderately precipitous slopes and with small valleys between.

To the eastward lies the great agricultural Piedmont Plateau, from which little valleys follow back through the foothill region and into the mountains. At first these valleys are adapted to general farming, but as the region becomes more rugged they are pinched out and the soil is unsuited to cultivation.

ONLY SMALL AREA ADAPTED TO ORCHARD GROWING.

Where the Blue Ridge supersedes the foothills, many orchards have been planted on the better soils, and it is these in part which have given to western North Carolina the reputation of producing good fruit—a reputation justly deserved and capable of being much extended.

The success of apple orchards on soils and locations as already described, however, caused plantings to be made at greater and greater elevations, on very steep lands. As a result, orchards in such places are much less profitable than twenty years ago, simply from the increase in cost of labor, and eventually this item will, and in fact does already, make it impossible to compete in the production of apples with other areas where the decrease in the amount of labor necessary will more than offset the additional cost of land more economically worked. But even more striking is the problem of insect and fungus attacks. It is not economically feasible to plant orchards in the eastern United States where the land is so steep that the orchards can not be effectively sprayed at a reasonable expense, and the fact that this has been done in some cases in the past argues nothing for its probable success in the future.

Again, on some of these steep lands orchards have been planted at so great an elevation that the yield of fruit has been much lessened, the bloom having been destroyed or the trees winter-killed more often than at a more moderate elevation. The climate, then, goes hand in hand with the steep and rugged features and the character of the soils of large areas in this region to render their use for other than forest purposes impracticable.

The Great Smoky Mountains lying to the west and southwest of the Blue Ridge are generally rough and valueless for any purpose except the growing of timber. Throughout the higher mountains cultivation is impracticable because the soils rapidly erode when cleared and farmed. The sand and gravel washed from the mountain fields are carried down in large quantities to the lower courses of the streams in the piedmont region and deposited on valuable agricultural lands, rendering them valueless. Single floods will occasionally leave deposits several feet in thickness.

CUMBERLAND MOUNTAINS.

In the Cumberland Mountain region the soils are naturally much less productive than on and east of the Blue Ridge. They are more similar to the soils of the Great Smoky Mountains, being derived principally from sandstone. On the top of the escarpment which borders the Tennessee Valley on the west, the character of the topography is less rugged. The soils spread out more in the form of tablelands, which often include areas of level to moderately rolling land. The underlying rock, however, is so resistant to weathering that the soil has seldom accumulated to much depth, and often it is very stony from the fragments of sandstone. As a result, in many places these soils are ill suited to agriculture. When of sufficient depth to constitute agricultural land, moderate crops can be grown, but the soil is not naturally very productive and requires a good deal of fertilization. Transportation in this region also presents a difficult problem. The railroads have followed the little valleys, leaving the broad uplands between them, from which they are separated by a steep escarpment of 1,000 feet or more, in an isolated location; hence the possibilities for practicable and profitable agricultural development in this region are very limited.

FOREST.

The Southern Appalachian forests fall naturally into three types—cove, slope, and ridge—each with peculiar characteristics. The soil in the coves is usually deep, moist, and fertile. The naturally good conditions are supplemented where unaffected by fire by a deep, partially decomposed layer of humus, which increases the moisture-holding capacity and prevents erosion. Yellow poplar, maple, and hemlock are strictly limited to the coves. Black walnut and black cherry once occupied the cove land also. It is in the coves that the Southern Appalachian forest attains the greatest variety and luxuriance. It is here that growth is most rapid and the best quality of timber is produced. The situation is also best for lumbering, hence it was that the first cuttings of the Appalachian forests were in this type.

The slopes have a better-drained soil than the coves, but one which is less fertile. The maple, hemlock, and poplar of the coves give way on the lower slopes to oak, chestnut, and hickory, where these species have their most perfect development. White oak extends all the way from the coves to the summits of the ridges, but on the slopes it does best.

The ridges have a dry, stony soil and an exposed situation which distinctly affects the kind and quality of their timber. The more valuable trees of this type are chestnut, chestnut oak, black and red oaks, and sometimes white oak and white pine. The severe conditions result in scrubbier timber than is found on the slopes and unfit the ridge lands to be handled profitably for the production of saw timber. The lumbering of the ridges for the production of telephone poles, railroad ties, tanbark, and extract wood is profitable, but on account of the slow growth of the timber on the ridges the lumberman generally does not consider it profitable to cut conservatively and protect the young growth for a second crop.

DAMAGE THROUGH CLEARING.

Originally the forest covered almost the entire Southern Appalachian region. Due to clearing for agriculture, the forest is now confined to the mountains and to the valley lands which are stony, cut into steep hills, or wanting in fertile soil. All the best valleys are cleared. The fields in many places extend far up the mountain sides, frequently even to the summits.

In clearing land, only the undergrowth and small trees as a rule are removed. The large trees are killed by girdling and left standing. One frequently sees fields worn out and abandoned before the girdled trees have fallen. New ground is usually cleared beside the abandoned field and the same destructive process repeated. In places may be seen three successive clearings—new, still cultivated, and abandoned—with the dead trees still standing on all of them.

Clearing virgin forests for farms is going on steadily from year to year to replace worn-out, eroded, and abandoned lands. Always the movement is toward the higher lands, those lower down having finished their course.

Many small tracts, reaching thousands of acres in the aggregate, unsuited for either tillage or grazing, have been cleared, especially

along the Blue Ridge. Most of them are depreciating from erosion. While no longer in forest, they are fundamentally forest lands, and their earning power can only be reestablished by replacing the forest to which they are naturally adapted. While scarcely any of the remaining timbered land is as valuable for agriculture as for timber, under the present system a large portion of it is certain to be cleared.

LUMBERING AND FIRE.

The following table shows the area of forest in the mountainous part of each State, with the area and percentage of cut-over and virgin land:

TABLE 3.—*Forested area of the Southern Appalachian region.*

State.	Total forested area.	Unlumbered and lightly culled.		Lumbered and second growth.	
	Acres.	*Acres.*	*Per cent.*	*Acres.*	*Per cent.*
Alabama	3,730,000	509,000	14	3,221,000	86
Georgia	2,730,000	432,000	16	2,298,000	84
Kentucky	11,785,000	1,185,000	10	10,560,000	90
Maryland	716,000	30,000	4	686,000	96
North Carolina	4,771,000	1,628,000	34	3,183,000	66
South Carolina	831,000	142,000	17	689,000	83
Tennessee	16,483,000	2,584,000	16	13,899,000	84
Virginia	7,265,000	1,000,000	14	6,265,000	86
West Virginia	10,272,000	2,250,000	22	8,022,000	78
Total	58,583,000	9,760,000	17	48,823,000	83

Of the 58,583,000 acres of timberland, 17 per cent is uncut, while 83 per cent is cut over. The uncut timber as a rule is in the higher, more inaccessible parts of the mountains. Occupying the ridges and higher slopes, it is unequal in quality and stand to the timber of the lower slopes and coves. The cut-over lands are in all stages and conditions of reproduction and growth. From some of it has been removed only the best species, such as walnut and poplar. From most of it the chestnut and oak, which form the main body of the forest, have also been cut.

Over practically all of it, whether cut over or not, fires have burned repeatedly and destroyed a large proportion of the young trees, which, if allowed to grow, would now represent growth of from one to fifty years. In like manner the undergrowth and the humus, both vital parts of the forest, have suffered great injury. Following fire, insects have at times wrought great local damage.

Lumbering is going on more extensively in the hardwood forests of the Southern Appalachians than ever before. While in the past seven years the hardwood cut has decreased in West Virginia, Kentucky, and Tennessee, the diminution of cutting has been chiefly in the more level parts of these States. In the mountains, where heavy cutting has not been going on for so long, the cut is probably as heavy or heavier than ever. In North Carolina cutting in the mountains has been heavy enough to increase the output of the entire State.

There has been little tendency on the part of the lumberman to conservative cutting. The usual belief is that, because of the danger

from fire and the high taxes on lands with standing timber, it does not pay to cut lightly and protect the land for a second crop. Hence the lumberman cuts the timber as heavily as possible, gets as much money out of it as he can, and then transfers his operations to another tract. It is the same principle as the mountain farmer adheres to when he abandons a worn-out field for a new one.

Lumbering is attended with almost as much waste as ever. Actual measurements in average operations of hardwood tie making show that from 75 to 82 per cent of the whole tree and from 43 to 73 per cent of the logs used is wasted. We realize that the waste is enormous when we consider that probably 20,000,000 ties, each containing 2¾ cubic feet, are cut in this region every year. Railroad ties are only one product. The manufacture of lumber and the making of telephone poles and cooperage stock are attended with waste almost as great.

The only industry that uses the forest without much waste is the tannin-extract business, which, while using up the mature timber, is open to objection in that it takes the chestnut and oak forests almost clean, young trees and all.

Several active influences are thus constantly operating to reduce the area and deteriorate the quality of the Southern Appalachian forests. Clearing, destructive lumbering, and fire are far the most prevalent and damaging, but grazing, mining, and insects contribute to the injury in a local way. Although the area of the forest is much less than formerly, these agencies are at work more actively than ever before. Their combined influence, if unchecked, is sufficient practically to obliterate the commercial forest of the Southern Appalachians within the next sixteen years. All that is needed for this result is a continuation of present conditions.

CONDITIONS IN THE WHITE MOUNTAINS.

TOPOGRAPHY.

The White Mountain region is drained by five large rivers—the Connecticut, the Pemigewasset, the Saco, the Androscoggin, and the Kennebec. The watersheds of these streams form a very rough and rugged region broken up into many short mountain ranges separated by deep, narrow valleys. The White Mountains proper, the most rugged and elevated portion, cover about 812,000 acres. Seventy-four peaks reach a height of over 3,000 feet, and of these eleven are over 5,000 feet. The tallest, Mount Washington, rises to an altitude of 6,290 feet, and is among the tallest peaks east of the Mississippi River.

A characteristic of the topography is the great irregularity of arrangement of the mountains. With the exception of the Presidential Range, there are no long ranges. The greatest number of peaks are in irregular groups, or isolated. The three main ranges, the Presidential, the Carter-Moriah, and the Franconia, have a general northeast and southwest direction.

The Presidential Range is the most important. In it are included nine of the eleven peaks with elevations above 5,000 feet. It is popularly considered as extending only from Mount Madison on the

north to Mount Webster on the south, and includes the following peaks: Madison, the three Adamses, Jefferson, Clay, Washington, Monroe, Franklin, Pleasant Dome, Clinton, and Webster. This stretch of country is about 15 miles long by 5 miles in breadth and contains about 50,000 acres.

This range is the source of five rivers, by which it is drained—the Saco, the Ammonoosuc, and Israel, tributaries of the Connecticut, and the Moose and Peabody, tributaries of the Androscoggin.

The underlying rock is granitic gneiss. By disintegration and mixture with organic matter it forms a loamy sand. The depth of the soil varies with the elevation, aspect, and gradient. In the valleys and on the lower slopes the soil is generally deep, with little outcropping rock. With ascent in altitude and increase in gradient the depth increases, till on the steep upper slopes there are only immense masses of bare outcropping rock and scattered bowlders.

Next to the Presidential Range, the Carter-Moriah Range is of the most importance. It runs parallel to the Presidential Range and is separated from it by the Glen Ellis and Peabody rivers. The highest peak is Carter Dome, with an elevation of 4,860 feet, and there are eight peaks in all, with elevations of over 4,000 feet. The general character of the soil and underlying rock is the same as on the Presidential Range. The range is about 20 miles long and from 2 to 7 miles wide. It is entirely surrounded by the five rivers by which it is drained—the Peabody and Glen Ellis rivers on the west, the Wild and the east branch of the Saco on the east and south, and the Androscoggin on the north. The Peabody and Wild rivers flow northeast into the Androscoggin, and the Glen Ellis flows into the Saco.

The northern part of the White Mountain region, in Coos County, N. H., is flatter than the White Mountains proper, and contains many lakes and low mountains with wide rolling valleys between. The Connecticut Lakes, the headwaters of the Connecticut River, lie in the northern part of this region. These lakes are small. The protection of the watershed around them is therefore of greater importance than if they were large and formed a greater storage area for water.

The area in Maine includes 700,000 acres in Oxford and Franklin counties. This entire region is very rough and rugged, containing no regular ranges of mountains, but being broken up into a great number of irregular peaks and ridges. The five Rangeley lakes, the headwaters of the Androscoggin River, lie in the southern part of this region. North of these lakes, in the Magalloway, Cufsuftic, and Kennebago watersheds, the country is extremely rough, including a great number of tall mountain peaks, extending up to the Boundary Mountains between the United States and Canada. The extreme eastern portion of this area lies in the Dead River watershed, the extreme headwaters of a tributary of the Kennebec River. The land in this watershed is flatter than to the west and contains many small lakes, ponds, and bogs. For this reason the protection of the watersheds is not of so great importance as in the more mountainous country to the west, and the main watershed of the Kennebec River has not, therefore, been included in the proposed boundary lines.

AGRICULTURAL POSSIBILITIES.

The entire region is essentially a forest country. That the land is, for the most part, better suited to forest production than to agricultural use is evidenced by the once cultivated lands which have now come up to forests of second-growth spruce and pine. Where repeated fires have not kept back the young growth these give good promise for the future. Thousands of acres of once cleared land have been abandoned throughout the White Mountains, and a smaller area of land is now farmed than fifty years ago. Only along the intervales and valley bottoms is good farming land found.

The farm land in the Saco drainage basin, which contains the largest area of cultivated land in the White Mountain region proper, lies chiefly in the eastern and southern portions. The soil is sandy and poor, and except right along the streams the farming is not good. The principal crops are clover and timothy hay, oats, rye, wheat, corn and potatoes, peas and beans. There are a few orchards, usually overgrown and neglected.

North of the White Mountains proper practically no land has been cleared for agricultural purposes, and in the greater part of this country there are no settlements of any kind save the logging camps and an occasional hunter's cabin or summer hotel or camp.

FOREST.

Originally the entire northern region, including the White Mountains proper, was covered with a dense forest of conifers. It was primarily a spruce country, and the spruce here attained fine dimensions. White pine, too, covered large areas and was mixed with spruce over much of the region. Balsam occurred in mixture on the upper slopes and the lower, moister localities. There was originally very little fine hardwood forest except south of the main ranges of the White Mountains.

In the White Mountains proper, red spruce and balsam are the prevailing species, and reach the highest elevations on the mountains. North of the White Mountains these trees with white cedar, and around the Connecticut Lakes with white spruce, are the chief conifers. Lumbering has brought about a great change in the species. Hemlock and white pine, once common at low elevations and along the valleys, are now of but little importance in the forest. Yellow birch, sugar maple, and beech are the commonest of the hardwoods and have greatly increased in numbers on the cut-over land. But little of the original forest is now left. Where there was formerly a heavy stand of spruce and balsam there is now a hardwood forest with a little spruce in mixture. Where fires have occurred there is a tangle of wild red cherry, yellow birch, and aspen.

Hardwoods occur on the lower slopes and deeper, better soils. Here yellow birch, sugar maple, and beech are now the characteristic trees, with considerable spruce in mixture. The spruce forms a better timber tree on these slopes than in any other situations. These hardwood slopes rarely extend above an altitude of 2,400 feet. The forest is, as a rule, dense and clean, with a heavy shade. The ground cover consists chiefly of witch hobble, mountain maple, and moun-

tain ash. The shade is too heavy for good softwood reproduction, but the reproduction of hardwoods, particularly of sugar maple and beech, is often very thick, with a dense matting of young seedlings covering the ground. Very little of this type is now left in virgin forest in the White Mountain region itself, since it was easily lumbered.

Spruce and balsam occur at present on the steeper slopes where the soil is shallow, and the hardwoods do not thrive so well. Unmerchantable spruce and balsam are found on the extreme upper slopes and finally run out into a scrubby growth near the summits. The stand is usually dense. Where the forest has been undisturbed the ground cover is moss. The balsam reproduction is often very thick and the spruce reproduction generally fair.

Spruce slopes cover the greatest area of any of the forest types in this region. Where these slopes are cut over, if fire is kept out, the softwoods return in the second growth. Where fire runs over the ground after lumbering, however, in many cases the entire soil is burned and washed away and the process of return to forest conditions is very slow. In some cases, as on the Sugar Loaves, in the township of Carroll, it will never be complete.

There is practically no real swamp land in northern New Hampshire, although in places the spruce flats approach such a type. There are, however, small areas of swamp of spruce bogs, chiefly in the northern part of Coos County. These have a very dense, scrubby growth of black and red spruce and balsam. In Maine such bogs are more common, and a number of swamps are found, particularly in the Cufsuftic watershed.

LUMBERING AND FIRE.

Six large lumber and pulp companies are now engaged in logging operations in this region, besides a large number of smaller concerns. But little virgin spruce timber is now left, and at the present rate of lumbering it can last but a few years longer. As far as possible these companies get their present supplies by purchasing stumpage on small holdings in order to preserve the timber on their own lands as long as possible, and owing to the fact that stumpage can now be bought cheaper than it ever can again. When these small holdings are lumbered in this way, they are almost always "skinned" to the last merchantable stick. Owners of the smaller tracts themselves often cut their woodlands in the same manner in order to get as much present revenue as possible. Throughout the mountains the worst destruction has been done on the high slopes, and fire has often followed with terrible results.

Clean cutting is practiced on all the steeper slopes. The spruce logs are rolled down the slope to the road below over the merchantable stuff and the hardwoods, which are first felled down the slope and thus form a good rolling bed. The hardwoods are left lying on the ground unused. The result is a veritable fire trap that lasts for years. In 1903, 84,250 acres of land were burned over in the White Mountain region. While this land was for the most part cut over, a conservative estimate would place the amount of damage at something over $200,000. This was a particularly bad year for fires, but the same conditions of drought may occur at any time, and, without proper protection, the area burned over may even exceed that burned

in 1903. Once a fire starts on cut-over lands, with wind and weather favorable to its spread, it is usually impossible to combat it with any success. Where the cut has been heavy and the resulting débris correspondingly large, all the difficulties of fire fighting are proportionately increased. All kinds of waste material left in the woods supply food for the flames, but the leaving of large, unlopped softwood tops on the ground adds enormously to the fury of a brush fire and greatly prolongs the length of time that a slash remains a menace to its own and surrounding areas. These large tops, propped up from the soil by their branches, are very slow to decay and become very dry. A large area in the Zealand Valley was burned over in 1903, eleven years after the last lumbering. This valley, which had been logged for spruce saw logs only, is an example of the great length of time that cut-over land must be specially protected against fire even when a very large proportion of the stand is left after logging.

Fires on cut-over land usually kill all standing timber left, as well as all the young growth. On the steep slopes, where they are particularly likely to spread, owing to the method of clear cutting on such slopes, the destruction of the soil is almost certain. On many slopes the presence of any forest growth whatever is due to the accumulation, through the ages, of a mass of organic matter which held the mineral particles of rock as they were gradually disintegrated, preventing their being washed to the bottom of the slope. The soil that obtains to-day on such areas is very largely organic matter, and when fire-swept, if dry, is so nearly consumed, especially by repeated fires, that the remaining mineral particles are easily washed away until nothing but bare rocks remain. A thousand years will not replace this soil and a growth of trees upon it.

On such areas the water run-off is much more rapid than on uncut or even on cut but unburned areas, as nothing remains to retard or hold the rain water on the slopes. There is little left but bare rocks, and the water runs off very rapidly, causing floods and freshets in the valleys below and extremely low water soon after, owing to the fact that little water is retained on the slopes to be given out later as on forested land.

VALUE FOR RECREATION.

The White Mountains are visited annually by thousands of people from every State in the Union, and from foreign countries as well. No other section of the country is so accessible to so many of the greater eastern cities. In consequence, it forms a great recreation ground for thousands of people. The very existence of the region as a summer resort depends directly upon the protection of the forest from fire and destructive lumbering, which absolutely destroy the beauty of the landscape. The virgin forest still remaining in the White Mountain region proper is practically confined to two localities—one on the northern slope of the Presidential Range, and the other that in Waterville. Clear cutting of this virgin growth will undoubtedly greatly detract from the value of these localities for summer resorts. The natural beauty of the mountains is enhanced by their forest covering. Without this they are bare and unattractive, and when fires occur after logging the landscape is rendered bleak and desolate.

AREAS OF ESPECIAL IMPORTANCE.

Owing to the high price that would have to be paid for virgin forest land, but little of such land can be bought. Certain small areas of virgin forest should, however, be preserved, surrounding places of particular importance, as recréation grounds. The destruction of the forest upon them would almost completely destroy their value. These places are frequented by thousands of people annually, and their preservation is of great importance. On invitation, representatives of the Appalachian Mountain Club, the Massachusetts Forestry Association, and the Society for the Protection of New Hampshire Forests cooperated with the Forest Service in locating five such areas. Their combined area will not exceed 5,000 acres.

One area is located on the north slope of the Presidential Range around the ravine of the Cascades and extends from an area that has been recently logged over up to the limit of merchantable timber at an elevation of 4,000 feet. It includes the slopes on both sides of and above the Cascade Falls. These falls are much frequented by campers and vacationists, and this would be the only area of virgin timberland left on the north slope of the Presidential Range. Another area is located around the Glen Ellis Falls and extends in a narrow strip from here, on both sides of the trail, up through Tuckermans ravine on the slopes of Mount Washington to an elevation of 4,000 feet, the limit of merchantable timber. Another area is situated on the East Branch of the Pemigewasset River, where Cedar and Shoal Pond brooks come in. This is a popular camping spot for parties crossing from the Crawford Notch region through the Pemigewasset Valley to North Woodstock, and is very much used for camping. Another tract is situated 7 miles west of North Woodstock on the Mousilauke Brook. At this point, about 1 mile from its source on Mount Mousilauke, the brook disappears underground and flows through a series of caverns for a distance of nearly half a mile, being here called "Lost River." This underground stream is one of the remarkable natural features in the White Mountains. Some twenty or more caverns make the whole place one of unusual interest. Still another area is Eagle Cliff, which is a combination of six mountains, ranging in height from 2,400 to 3,100 feet, all combined in one massive group, in the Franconia Notch. The south side of this cliff is very steep and overlooks the Profile House, but on the opposite (north) side it is more sloping in character, extending down to the wild bed of Lafayette Brook, and is covered with a forest growth, mixed spruce and hardwoods, of remarkable evenness and beauty. It is the most prominent forest on the Franconia Range and one of the most prominent to be found on any of the mountains.

AREA AND LOCATION OF LANDS NEEDING PROTECTION.

In order to determine the extent of the lands primarily available for forests in the Southern Appalachian and White Mountain regions, a reconnaissance survey has been made, as a result of which the accompanying maps have been prepared. Maps I and II show for the two regions the lands to be classed as distinctly mountainous and nonagricultural.

[redacted]

he main centers for such mountainous and nonagricultural lands he Southern Appalachians are, first, the Blue Ridge and Great ky Mountains of North Carolina and Tennessee, South Carolina Georgia; second, the Allegheny Mountains of eastern and south- West Virginia and western Virginia, and, third, the Cumberland ntains of eastern Kentucky, Tennessee, and northern Alabama. se lands include the main mountain ranges, and the roughest, lest land of the region. Naturally, they embrace a smaller pro- tion of agricultural lands than other parts of the region, and those ch they do embrace have for the most part been eliminated, as be seen from the irregular boundaries on the map. Regardless hese eliminations they still include some small bodies of agricul- l lands. These areas, though they contain only 40 per cent of the bered land of the Southern Appalachians, include almost all of virgin timberlands, because the virgin timber which remains is tly situated on the high mountains. Even though these lands produce an inferior grade of timber, their sole use must be for ber production. There is no other crop which will hold the grav- , stony soil in place and keep it from clogging the channels of ams and covering the agricultural valleys which lie below. se nonagricultural and mountainous lands, approximating 23 ion acres, give rise to all the important streams which have their ce in the Southern Appalachians. They are therefore the vital ions of these mountains. Whatever work is done to protect the thern Appalachians must center in these areas. The proportion which these lands fall into different States and watersheds is wn in the following tables:

E 4.—*Area, by States, of nonagricultural and mountainous lands in the Southern Appalachians.*

State.	Area.	State.	Area.
	Acres.		*Acres.*
ssee	4,962,000	West Virginia	5,797,000
nia	3,882,000	South Carolina	590,000
ma	491,000	Maryland	277,000
ia	1,806,000		
ucky	1,623,000	Total	23,310,000
Carolina	3,882,000		

BLE 5.—*Area, by watersheds, of nonagricultural and mountainous lands in the Southern Appalachians.*

Watershed.	Area.	Watershed.	Area.
	Acres.		*Acres.*
ssee	2,489,000	Yadkin	428,000
erland	2,759,000	Big Pigeon	20,000
on	582,000	Catawba	502,000
	1,138,000	Broad	299,000
ke (Staunton)	431,000	Potomac	2,095,000
Kanawha)	3,225,000	Chattahoochee	345,000
andy	1,347,000	Little Pigeon	19,000
asee	1,066,000	Twelve Pole	1,000
Tennessee	1,307,000	Savannah	860,000
h Broad	623,000	Guyandotte	660,000
n	255,000	Saluda	100,000
River	202,000	Kentucky	156,000
ngahela	987,000	Coosa	767,000
ucky	379,000		
nlogheny	117,000	Total	23,310,000
an	151,000		

While the lands shown on the map are all in need of protection, they are not all of equal importance when all economic points of view are considered.

The lands to be classed as of first importance include the mountain ridges mainly, but extend considerable distances down the slopes in those localities where the soil is particularly subject to erosion and on the watersheds of streams of greatest importance for water power or navigation. The area of such lands does not exceed 5,000,000 acres.

The same class of land for the White Mountain region is shown in Map II. It lies in both New Hampshire and Maine. Excluding the numerous bodies of water, their area in New Hampshire is 1,457,000 acres, and in Maine 700,000 acres, making a total of 2,157,000 acres. The proportion in which this falls in the five water systems included is as follows:

	Acres.
Connecticut	429,000
Merrimac	264,000
Saco	332,000
Androscoggin	1,002,000
Kennebec	130,000
Total	2,157,000

There is also shown on this map an area embracing only the four main ranges of the White Mountains. A few thousand acres of this area lie in Maine. All the rest is in New Hampshire. *This principal White Mountain area covers 668,000 acres, and, considering all economic points of view, is the most important part of the region.*

TREATMENT OF THE REGION.

The areas indicated in the preceding section, 23,310,000 acres in the Southern Appalachians and 2,157,000 acres in the White Mountains, do not include all the mountainous timberlands of the Appalachians. As is discussed under the heading "Importance of Appalachian forests for hardwood supply," there are probably 75,000,000 acres in this mountain system more important for timber production than for any other purpose. This area will have to be given protection before the hardwood supply is on a safe footing and before the watersheds of the important streams are adequately safeguarded.

It is an enormous undertaking to bring this immense area of 75,000,000 acres under proper conditions of protection and use. If the Government owned the land, the problem would be a comparatively simple one under our present forest policy. The Government owns almost none of it, and it can not be expected to undertake the purchase of such an area which at present prices would amount to many millions of dollars.

The land is owned by individuals or companies whose chief interest is immediate profit. Considering past and present conditions one is forced to the conclusion that the individual holders are not going to manage these lands in a way commensurate with public welfare. On account of the difficulty of protecting them from fire, and on account of the high tax rates which are common on cut-over timberlands, the owners consider that it does not pay them to do so.

The several States of the Appalachian region can not protect these lands as a whole. They may control certain areas of them, as the States of New York and Pennsylvania are doing, but as a rule the national or interstate bearings of the problem are such as to make it unreasonable to expect that the States will purchase these lands and put them under management. A few examples make this clear. No State of the group feels it incumbent upon itself to provide the Nation's supply of hardwood timber. The State of West Virginia does not feel keenly the necessity of protecting the upper watershed of the Monongahela River because certain cities of Pennsylvania, Ohio, and Kentucky are inundated and suffer damage by the Monongahela floods. North Carolina will never purchase and protect the headwaters of the Yadkin and Catawba rivers because the navigation and water-power interests on these streams in South Carolina suffer from the denudation of the mountain forests. In the case of almost every watershed there are complications of this kind.

While none of the three, the Federal Government, the individual holders, or the several States, can be expected to try to solve the problem as a whole, the problem is nevertheless so important that it must be solved, and all three are in a position to be keenly interested in its solution. Therefore it is necessary to consider whether a way may be found by which all three may participate in solving it.

Since the lands are now in the hands of individuals the simplest procedure would appear to be by an arrangement whereby the greater part of the region could be handled by individuals so that the property would not change control. Considering the vast extent of the lands, it seems almost inevitable that if they are to be protected at all, they must be protected mainly by the individuals who own them. Can this be done? It can be done, if at all, only by making it profitable for individuals to hold these lands after cutting them over. It may be stated as the rule that timberland owners would not want to sell their lands and would put forestry into effect upon them if it were not for the difficulty of protecting them from fire and the high rate of taxation which prevails in many parts of the Appalachian region. But individuals alone can not overcome these great obstacles.

What individuals under present conditions can not do, however, can be made possible by the States. It is possible for the States to pass such laws for fire protection as to insure the safety of the most valuable timberlands. This is being done by a number of the States with considerable and increasing success. The problem of equitable taxation for forest lands is a more difficult one and it has not as yet been solved. Its solution is necessary, however, and necessary in the immediate future.

If the States of the Appalachian region would set themselves to the providing of efficient fire laws and the solution of the question of forest taxation, they would do a work of incalculable importance in the protection of the Appalachian forests. They would make it not only possible but profitable to put under protection and conservative management practically all of those lands which are suited to the production of the most valuable kinds of timber, and which are accessible for economical administration and lumbering.

Inaccessible lands, lands where the rate of timber growth is moderate or slow, or lands on which the timber when mature is not of the best quality, can scarcely be affected by this procedure. Something additional must be done to protect them. Such lands in the White Mountains and the Southern Appalachians lie almost altogether within the areas designated in Maps I and II of this report. For the most part, they make up the 668,000 acres in the White Mountains and the 5,000,000 acres in the Southern Appalachians, already mentioned as being of first importance for protective purposes.

In the control of these lands does not the Federal Government have a large obligation and a corresponding opportunity? A careful study of their character and of their relation to the administration of the entire region convinces me that it has, for the following reasons:

1. The safeguarding of these lands can not be accomplished by action of the States in passing fire and tax laws. Some special action taken with a view, primarily, of public welfare is necessary.

2. These lands are of value solely for timber production. They lie above the limits of fruit growing and farming. If not in timber they must come to a condition of absolute waste, the prey of fire and any sort of abuse or mismanagement. Cared for, they will form a valuable addition to the future timber supply, which the Government must take action to secure.

3. These lands form the most important part of the two regions. Having the greatest elevation, they receive the largest amount of rainfall; being steepest, they are most subject to erosion. Therefore their influence on the streams of the region is far greater, for good or ill, than the influence of any other areas of equal extent.

4. Every acre of these lands is on the watershed of a navigable stream on which for the removal of sand and silt the Government is even now spending money in large amounts. The sand and silt which are now in the rivers have come from the cleared slopes of gentler gradient and lower elevation than those remaining in forest. If the forest is destroyed from these higher lands the expense of keeping the stream clear will be multiplied many times.

5. The States can not afford to protect these lands. The timber which they can produce is not valuable enough for the State to protect them for the timber crop. Almost without exception they lie on the watershed of a stream which has its chief commercial importance in another State. Therefore no State is willing to put them under control for the protective value of their forest.

6. By taking control of these lands the Federal Government would be in a position to exert by example and cooperation a far-reaching influence for the safeguarding of the two regions. With relatively small bodies of land on each of twelve or fifteen important watersheds, it could cooperate with other landowners on each watershed in protecting the locality from fire and in the introduction of improved methods of forest management. Advices from timberland owners in many localities justify the opinion that in this way conservative forest management can be effected over millions of acres of private lands. In my judgment it is clear that by the ownership of 5,000,000 acres in the Southern Appalachians and 600,000 acres in the White Mountains the Government can lead the way to the right management and use of the entire areas designated on the maps.

IMMEDIATE ACTION DESIRABLE.

If this is a good programme of action, the Government should undertake its part of it without delay. Some of the States already show a tendency to act in line with it. Maine, New York, Pennsylvania, and Maryland have already fire laws nearly, if not quite, adequate for the situation. Alabama, in a special session of its legislature, has just enacted a similar law. Other States are showing an interest which indicates action within the next year or two. The Government should not delay. It will clear the situation immensely if the Government will say how far it will undertake to go, and immediately enter upon its work.

If the Federal Government is willing to purchase land in the Southern Appalachians to the extent of 5,000,000 acres, and in the White Mountains to the extent of 600,000 acres, it should choose these lands in situations where they will have the most influence upon the protection and management of the two regions. In the Southern Appalachians these lands would not lie in one body. They would lie in no less than ten or twelve bodies, and on different watersheds. In the White Mountains the lands would lie for the most part in one body, which would include the Presidential, Franconia, Sandwich, and Carter-Moriah ranges of mountains.

METHOD OF ACQUIREMENT AND COST OF LANDS.

WHITE MOUNTAINS.

The timberlands of the White Mountains are in the main held by a few large companies, nearly all of whom are cutting extensively on the spruce stands for pulp or lumber manufacture. The plants of some of these companies represent an investment of several hundred thousand dollars. Manifestly, in negotiating for these lands, in so far as they bear uncut timber, the value of the plant must enter into the consideration. In addition, the stumpage value of spruce ranges from $4.50 to $6 or $7 per thousand. This would give the best stands a value of $75 to $125 or more per acre. It is useless for the Government to attempt the purchase of virgin stands of spruce in these mountains, except on small areas surrounding points of especial scenic interest. These in the aggregate will not exceed 5,000 acres.

The hardwoods of the White Mountains, of which there is a large area, have not the value of spruce, nor are they as yet being extensively cut. Their stumpage value is from $2.50 to $4 per thousand, depending upon location, stand, and quality.

It is clear that in the main any purchase made by the Government in this region must be on the basis of cut-over lands with respect to both spruce and hardwoods. As a rule the spruce has been cut clean. The hardwoods, where cut at all, are culled so that a considerable stand of young timber may remain after cutting. A considerable portion of the cut-over land has been burned over, some of it so severely as to destroy all possibility of a future stand of timber for many years to come.

The cut-over lands have a value ranging from $1 to $6 or $8 per acre, depending upon the condition of the timber growth upon them.

The question of the acquirement of timberlands by the Government has been considered with the principal owners of the region. While unwilling to dispose of their virgin timberlands except at very high prices, they are willing to consider the sale of their cut-over lands, the lands lying too high for lumbering, and the mountain tops.

A careful study of the situation leads to the conclusion that most of the lands of these classes can be bought at an average price of $6 per acre.

Although it may be necessary to make cut-over lands the basis of purchase, so far as possible purchase should be made of uncut lands under an arrangement whereby the owner may cut the timber under the regulations of the Department of Agriculture. This would leave the land in far better condition than the average cut-over land, and the Government could well afford to pay a higher price for land under this management.

SOUTHERN APPALACHIAN MOUNTAINS.

In the Southern Appalachians the timberlands are owned by large companies to a less extent than in the White Mountains, but even here as much as 50 per cent of many localities is under such ownership. Likewise lumbering is going on less vigorously in the Southern Appalachians than in the White Mountains. This is accounted for by the fact that the Southern Appalachian region is large and many localities of it are very inaccessible. Logs can not be driven downstream as in the North, and railroads are lacking. Consequently, the price of timber all along has been and is now lower than in the North. For instance, spruce which in the White Mountains is worth on an average about $6 per thousand on the stump is in the high southern mountains worth only $2.50 to $3 per thousand.

Timberland owners in the Southern Appalachians are generally inclined to sell their lands to the Government at a reasonable price, regardless of whether the lands contain virgin timber or are cut over. Furthermore, many of them are favorable to the transfer of their lands, themselves retaining the right to cut and remove certain kinds of timber above specified sizes.

In considering the practicability of the Government's purchasing land for national forests in the Southern Appalachians conference has been freely had with timberland owners, lumbermen, real estate dealers, and title examiners. Moreover, attention has been paid to the sales which have been made during the past two years and the prices which have been paid.

The price of virgin hardwood land varies from $5 to $12 per acre, depending on accessibility and kind and quality of timber. Cut-over lands are worth from $2 to $5 per acre, their value likewise depending upon their location and the condition of the timber growth upon them.

In the Southern Appalachians, as in the White Mountains, it will be inadvisable for the Government as a rule to attempt the purchase of virgin forest lands. It should make cut-over lands the basis of purchase, and for such lands it should not exceed an average price of $3.50 per acre.

Neither in the White Mountains nor Southern Appalachians is it true that the Government will have to pay higher prices than would

have to be paid by individuals in purchasing the same lands. Some landowners might attempt to charge the Government more, but, on the other hand, there are those who appreciate the advantages of the Government's going into this work, and they would rather sell to the Government than to any other purchaser.

To purchase land economically in either region the Government should not limit itself closely either as to time or locality. Purchase should be undertaken in several localities at once, as in this way competition can be induced.

There should be no undue anxiety or haste to acquire land in any particular locality. Haste would mean the fixing of too high a standard of prices and result in waste of money, and besides would certainly involve the Government in difficulty with respect to titles, which in both regions present complications. The acquirement of the necessary lands in either region can best be accomplished by a steady process worked out through several years of purchasing those lands which are desirable, which are offered at the most advantageous rates, and to which valid title can be secured.

The right to take lands under condemnation proceedings would be helpful, especially, in some instances, to perfect title, but the condemnation right must be handled with the greatest care and judgment and should be used only to clear title and in other cases of extreme necessity.

RECOMMENDATIONS.

In view of the conditions described on the foregoing pages, it is clear that the Government should undertake without delay the acquisition of a definitely restricted amount of land in specified watersheds in the White Mountains and in the Southern Appalachians for the establishment of national forests.

In the White Mountains it is recommended that the Government acquire an area of not to exceed 600,000 acres within the area designated on the accompanying map and so situated as to embrace as much as possible of the Presidential, Franconia, Sandwich, and Carter-Moriah mountain ranges; that a limit of $6 per acre be fixed as the average price to be paid for cut-over lands; that an appropriation of $1,250,000 be made immediately available for such purchase: furthermore, that $250,000 additional be appropriated for the purchase of the timber in its present condition, surrounding the five important recreation points described on page 30.

In the Southern Appalachians it is recommended that areas aggregating not more than 5,000,000 acres be purchased within the limits designated on the accompanying map, and distributed, as may seem advisable, over the higher watersheds of the following rivers: Potomac, James, Roanoke, Yadkin, Catawba, Broad, Saluda, Savannah, Chattahoochee, Coosa, Tennessee, New, Cumberland, Kentucky, Monongahela; that the limit of average price be fixed at $3.50 per acre; and that an appropriation of $3,500,000 be made immediately available to begin the purchases.

It is recommended also that the Government adopt in both regions a policy of cooperation with timberland owners in order to bring about the protection of private forests from fire, and the general adoption of improved methods of cutting.

NATIONAL FORESTS WOULD AID LOCAL INDUSTRIES.

If established, national forests should in every way benefit the industries of the Southern Appalachian and White Mountain regions. Their influence upon the lumber industry would be to make it permanent rather than temporary, because its supply of raw material would be made permanent. As rapidly as the timber on the forests became large enough to be used it would be sold, but the young timber would be reserved from sale, protected, and held for a future crop.

The action of the Government in protecting from fire large areas of forest would largely solve the fire problem in the two regions. Forest fires are the greatest obstacle to private forestry throughout the Appalachians. Let this be removed, and private forestry in many localities will become not only entirely practicable but relatively simple. In this result alone the national forests would be of great help to the lumber industry.

To mining and prospecting the national forests would introduce no obstacles, as both operations could go on within the forests unhindered, just as they do in the Western States. In general, the Government should purchase the land without the mineral rights, and where the mineral rights were obtained regular provision should be made for their disposal. On the other hand, by insuring a future timber supply the reserves would be of the greatest value to the mines, which consume great quantities of wood. Often the profitableness of mining is determined solely by the presence or absence of a good supply of mining timbers.

To farming and fruit growing the national forests should give material stimulus. The protection of the higher mountain slopes would greatly increase the safety of farming and fruit growing in the valleys below. No agricultural lands should be included. Should it be necessary to purchase small tracts of farming land in order to obtain large areas of important mountain land, provision should be made for reselling or otherwise utilizing them. The forests need not interfere in the slightest degree with the settlers who own and cultivate small areas of farm land along the mountain streams. Neither would they stop the use of the mountains for grazing where there is proper food for stock. The high mountain tops or "balds" which sometimes would be included, and other good grass lands, could be grazed without interfering with the purposes of the forests.

The many other uses which can be made of the mountains would be facilitated rather than hindered. Such uses are for power development, hotel and residence sites, rights of way, and sawmills. The forests would not reduce the population of the region; on the contrary, they would increase the population by increasing the demand for labor and making more stable and permanent the local industries.

It has been raised as an objection against the proposed forests that they would reduce the funds of the counties affected, by cutting down the taxable property. This should not be the case. In the West the Government returns to the counties 10 per cent of all revenues received from its forests in them. This more than compensates for the loss of taxes. The same should be done in the East.

To the local residents of the Appalachian region the forests should be of great benefit. In addition to the protection they would give to farming and the permanence they would give to the lumber industry,

they would materially improve the opportunities for labor. In the first place, the management and protection of the reserves would be largely in the hands of local men, the best men obtainable being selected, just as is now done in the West. As the prevention of fire would be very important, a considerable force of men would be required in summer; and as there would always be more or less logging and construction work going on, there would be winter work as well. In the second place, a large amount of planting should be done as quickly as arrangements could be made for it. Many thousand acres of cut-over and eroded lands ought to be planted up, which will mean a large force of men working through several years.

National forests would mean the development of the Southern Appalachian and White Mountain regions beyond any point which would be possible without them. More and better roads and trails would have to be built, bridges constructed, and telephone lines put up. In all of this work the Government should cooperate with the local people just as it does in the West. During the present year $500,000 will be expended in such improvement work on the western national forests, and more will be required in the future. The East needs similar help from the Federal Government in the development of its mountain forest lands.

The policy here recommended, if carried out, will with certainty have as its ultimate effects the conservation, improvement, and increased use of the wood, water, and other resources of the Appalachian region. The benefits which accrue, while they will be direct and distinct for the local region, will be in their largest degree national. Every section of the United States will share in them.

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The Public Opinion Bill

SPEECH

OF

HON. H. C. LODGE

BEFORE THE

CENTRAL LABOR UNION OF BOSTON

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SPEECH OF HON. H. C. LODGE

Before the Central Labor Union of Boston, September 15, 1907.

MR. PRESIDENT AND GENTLEMEN: I am much indebted to you for your kindness in asking me to address you upon a public question which seems to me to be of the gravest importance. You are the representatives of the great labor organizations of Boston, but let me say at the outset that the measure which I am about to discuss is in no sense what is usually called a labor measure any more than it is a party measure. It is one which affects the entire community, every man and woman alike, without regard to their occupation or position, for it involves a change not in our laws but in the fundamental principles of our Government. What I am about to say to you was prepared some months ago, before I left Washington, because I thought that I might desire to discuss this question after I reached home, and I wished to speak, whenever the opportunity occurred, with care and deliberation. This argument was not designed for a special audience, but for any audience of any kind that might care to listen to it, because it concerns equally all citizens of Massachusetts. I therefore do not address you merely in your capacity as representatives of our great labor organizations, but in your larger capacity as American citizens, interested above all in the welfare of the community and in the safety and permanence of the Republic.

There was reported to the legislature during its last session an act known as the "Public Opinion Bill." It was brought up in the house, and after a full and very able debate was defeated by a decisive majority. But although this bill and its purposes were well understood in the legislature, I do not think that the gravity of the measure and its far-reaching effect were fully appreciated by the people generally. As a matter of fact, no more fundamental and far-reaching measure has been presented to the legislature of Massachusetts within my recollection. It was not a mere change in legal practice nor an alteration of long-established laws, nor even a constitutional change which was proposed. The bill involved all these and much more, for if carried out logically to its full extent, it would mean nothing less than a complete revolution in the fabric of our Government and in the fundamental principles upon which that Government rests. This may seem an extreme statement, but I think it is susceptible of absolute demonstration, because this bill, if it should become law, would undermine and ultimately break down the representative principle in our political and governmental system.

To make my meaning perfectly clear it will be necessary to consider briefly and historically the principles upon which all government rests and the instruments by which it is carried on. Our division of the

departments of government into executive, legislative, and judicial, with which we are entirely familiar, and which the Constitution of the United States made coordinate and independent, is not a modern classification, but represents in whole or in part the recognized and essential foundations of all government. The first method of government devised by man took the very natural form of a leader or chief. The recognition of a leader, indeed, may almost be described as a natural instinct, for leaders are common among herds of wild animals. The organization of government, therefore, by the recognition of a chief whose direction and command have greater or less authority is found even among the most primitive races of men, except among a very few tribes in the lowest stages of development who live in a condition of anarchy. The leader or chief of the savage tribe is the executive. He often, in the earliest times, combined with the executive power the religious function of high priest and the judicial function of deciding disputes among his followers. When we come to the great empires of which we have the earliest records, we find the executive fully developed, sacred in his person and vested with authority which made the government a practical despotism. All despotisms consist in the absorption of power by the executive, whether that executive is a single autocrat, as is usual, or a narrow oligarchy like the council of Ten at Venice. The despot may or may not have ceased to exercise the judicial function personally, but if he has created judges they exercise their powers only in his name. As for laws, he makes them all himself, and you can read to-day the laws of Babylon promulgated six thousand years ago and bearing the name of the king who made the code. In the supposed power of the king to cure disease by his touch, which was exercised in England by Queen Anne only two hundred years ago, as well as in the theory of the divine right of kings and in the right of the subject to appeal to the king for redress, which have endured to our own times, you may witness the survival of the doctrines of the most ancient governments known, when all functions, religious, judicial, and legislative, were represented by the executive. Coming down from the most ancient times we find in Greece and Rome a theory of government not known, so far as we are aware, to the more ancient Eastern monarchies. The government of Greece and the government of Rome were founded on the principle that the freeborn people of the city should govern themselves and choose their executive officers; in other words, we have there the idea of the New England town meeting. It would consume too much time for me to trace in detail the story of Greek and Roman government. The Greek cities were torn with factions, which led to the banishment of one party when the other was in power, to constant lapses into tyranny and to complete inability to build up a strong, extensive, well-organized state. Even the genius of Alexander failed to create a Greek Empire, and when he died all that he had brought together under a single government fell to pieces. Rome started and went on for many centuries with the government of a city democracy torn by the bloody strife of classes and varied by relapses into oligarchies and dictatorships. The Romans had in the highest degree the genius of government as well as the genius for war, but nevertheless when their dominions had become almost coextensive with the civilized world, government by the great senatorial families, tempered by the mob of the Roman Forum went to pieces in

corruption and disorder and the earlier and simpler form of an all-powerful executive supervened.

From the break-up of the middle ages, which succeeded the fall of the Roman Empire, gradually emerged the kingdoms of modern Europe. In every case but one those kingdoms developed into autocracies, great or small. That single exception was England, and it is merely reiterating a truism to say that what saved England from becoming one of the despotisms which arose and flourished in Europe after the breakdown of the feudal system was her Parliament. In that Parliament we find for the first time, on a large scale, the representative principle. England did not have as pure a democracy, in theory or practice, as Greece or Rome, but both Greece and Rome lost their liberties and England saved and extended hers. The rise of the modern despotisms of Europe, after the beginning of the sixteenth century, was marked by the gradual disappearance of those local representative bodies which had existed in the middle ages. The city republics of Italy, based on the theory of Rome and Athens, fluctuated between anarchy and tyranny until they all lapsed into the hands of domestic or foreign despots. Holland alone, of all the countries of Europe, preserved the freedom of her cities and her representative forms, and it was Holland, a part of the empire of Charles V, which broke the power of Spain, and retaining the principle of representa- ...ne tion, became under republican forms a free and powerful state. ...ing.

Wherever you look into the history of the last four hundred ...ethods you will find that the rise and the power of the representat... laws. are coincident with freedom, and that the rise of despotis... ...ities govern dent with the breakdown of whatever representative bo... ...emocracies have been. The history of the representative prin... ...rs by ballot. ...ars times is the history of political freedom, and ... of the town ... ...e body principle is the great contribution of the Engli... ...pen to debate ... ...is coinci- of the period since the Renaissance to th... postponement ... ...s there may Without that principle the democracy of ... ...se questions o... ...le in modern nation coextensive with the spread ... at this opport... ...his representative conquests while that of Rome sank ... ...uld be given ... speaking people and Empire of the first Napoleon and ... yes" or "no" ... science of government. both reared on the ruins of th... or delay? ... ...reece failed to build up a amples might be multiplied, ... a change or ... the Greek settlements and lasting advance which has ... or debate, am... ...er a complete despotism. The been made by and through ... the Public O... the third Napoleon as well were the struggle in Russia see... ...te at large ... ...egislative bodies of France. Ex- of a representative body. ...tion of r... ...t nothing is clearer than that every freedom and for the right ... ...efend ... ...en made toward political freedom has government which has fill... ...nt, b... ...e representative principle. Even to-day trating now to countries ou... ...er— ...ks, as its only assurance, the establishment the existence of this movemen... ...a Indeed the movement for a larger political manifested by the efforts in all ... of the people to take part in their own sentative institutions. ...ed Europe for the last century is pene...

In a word, it may be said that ... ...side the pale of Western civilization, and and the establishment of the ri... ...t in Persia, in Turkey, and in China i been coincident and gone hand in ... ...wo ...ese countries toward securing repre resentative principle. It is also to ... ...use the judiciary, the other great bulw... ...g or ... the individual, has followed every ... ...e advance toward political libert ...nts of the people to govern hav ...hand with the progress of the re... be noted that the independence ... ...rk of liberty and of the rights ...ere upon the growth and suc

of the representative principle in government. The destruction of this principle, therefore, would mean reaction and the return to the system of an all-powerful executive. There could be no greater misfortune to free popular government than to weaken or impair the principle of representation, and the quickest way to break that principle down is to deprive the representative bodies of all responsibility and turn them into mere machines of record. You can not take from your representative bodies all power of action and all responsibility and expect them to survive. If you bind a man's arm to his side and prevent its use and motion the muscles weaken, the arm withers and in time becomes atrophied and useless. If you force the legislature to deal with certain measures under a mandate which practically compels them to vote upon these measures in only one way you take from your representatives all responsibility and all power of action and the representative principle in your government will atrophy and wither away until it becomes in the body politic, like some of those rudimentary organs in the natural body, quite useless and often a mere source of dangerous disease. This Public Opinion Bill does this very thing, for it aims directly at the destruction of representative responsibility, and I think, although it received the support of many excellent people who did not pause to consider it carefully, that it found its origin among those small groups whose avowed purpose is to destroy our present institutions and forms of government and replace them with socialism or anarchy.

The advocates of the bill continually raised the parrot cry that those who were found wanting did not trust the people, and some persons actually seemed to think that instructions from a town or other constituency which were more common a century ago than they are to-day were equivalent to a public opinion bill and that there was some legal or logical equivalent at the present time to such instructions. There is no relation or parallel whatever between instructions of this kind and the scheme proposed by this bill, nor is there anything to prevent instructions by a constituency except the practical one caused by the increase in number of the electorate. The use of instructions has died out, although they are still employed occasionally, simply because improved means of communication and the growth of commercial, labor, and trade organizations have made other methods of reaching the same result quicker, easier, and more practicable. But this fact does not impair the rights of a constituency in the least, and any constituency can avail itself of this right if it so desires, for it is one of which no constituency could be deprived except by constitutional amendment.

Every constituency, I repeat, has the right to pass instructions to its representative if it ought now, as always, has the right of petition; but that is a very different thing from the final determination by ballot of every possible abstract question by a popular vote. It is worth while to emphasize this difference, for it throws light upon the whole question. The constituency, in the first place, instructs only its own representatives. It does not undertake to instruct the representatives of other constituencies, but only its own, thereby recognizing the representative character of the member or Senator or Congressman whom it has chosen. The instructions,

moreover, are passed by a meeting where they can be discussed, amended, and modified, and where the arguments of both majority and minority can be heard. The constituency in passing instructions is not confined to a blind, categorical "yes" or "no" upon a question where neither amendment, discussion, nor modification is possible. They act themselves only with the same safeguards which have been thrown about the passage of laws in the legislature. They are not the helpless instruments of a plebiscite, but freemen setting forth their opinions in the manner which the history of free government has consecrated. Instructions from a constituency are the very antithesis of the "mandate" which it is proposed to extort or cajole from the people by such a scheme as this Public Opinion Bill.

As to the cry that those who opposed this bill showed by so doing that they did not trust the people, no more unfounded and misleading argument was ever uttered. Suppose I say to you that I do not think that you can read in the dark. Do I thereby imply that your eyes are bad or that I think that you are ignorant and illiterate? Because I say that you can not read in the dark am I therefore to be accused of exhibiting distrust in your intelligence or your education? What I distrust and assail as a barrier to reading is the darkness. In order to read you must have light. In order to make wise laws you must have light to see whither you go and not make wild plunges in the dark. For good laws you must have good methods of lawmaking. I do not distrust the people who make the laws but I distrust methods of lawmaking which would force good people to make bad laws.

More than three hundred of our Massachusetts communities govern themselves in town meeting. They are the purest democracies the world can show. They elect their executive officers by ballot. But all questions as to the policies and government of the town are submitted to the meeting on the warrant and are open to debate, to amendment, to reference to a committee and to postponement. Do I distrust the people because I say that these questions ought to be submitted in precisely this way and that this opportunity for debate, amendment, and postponement should be given and that the voter should not be compelled to vote "yes" or "no" upon every question in the warrant without debate or delay? The people of our towns would never assent to such a change or allow themselves to be deprived of full opportunity for debate, amendment, and postponement, and yet that is just what the Public Opinion Bill proposes to inflict upon the people of the State at large.

Here is another illustration of my meaning drawn from the very principle which I seek to defend and preserve. I believe profoundly in representative government, but when I say that I am opposed to a single representative chamber—I am not showing distrust in representative government, but in a form of representative government which history and experience have shown to be fertile in evils.

Let me, however, take an example, which exhibits my meaning and demonstrates my proposition better than anything else, from our administration of justice, at once the corner stone and the bulwark of a free and well-ordered State. We determine differences between individuals and we try men and women for crime by judges and juries. Is it to be argued that because we say that a man shall not be tried for his life by a mass meeting or a popular vote, but by a judge

and twelve jurymen under the forms and regulations of law, we do not trust the people? Has not experience shown that no man's rights or life would be safe unless there was secured to him under the strongest guaranties the right of trial by jury? The lynch law, against which all decent men protest, is often carried out by mass meetings frequently representing the passions and beliefs of an entire community. Is it a failure to trust the people because we insist that the legal rights of the people themselves can not be preserved unless they are determined by a judge and jury? It is exactly the same in regard to legislation. Intelligent laws can not be passed without consideration, debate, deliberation, and the opportunity for amendment. To answer "yes" or "no" on an abstract question is to legislate by ballot without any of the safeguards which representative government throws around the making of laws. Plebiscites of this sort have determined and fixed the power of autocratic emperors, but they have never made the laws of a free people. This Public Opinion Bill is not even a referendum, for the referendum submits to popular approval a perfected measure, and in the case of purely local questions it is often used by our legislature. What is called the initiative is now covered, for all reasonable purposes, by the right of petition, but this Public Opinion Bill puts both initiative and referendum into one act and provides for the submission to the people not of perfected law but of any abstract question which any thousand people choose to suggest and which any five thousand voters can be found to sign, and upon which the people have no opportunity to do more than vote categorically "yes" or "no." You can not hesitate, you can not modify, you can not amend, you can not postpone. The pistol is at your head; throw up your hands and answer "yes" or "no" at your peril. There are four questions on the ballot. Only one probably has been discussed, and that insufficiently, for perhaps thirty days. No matter; you must answer "yes" or "no" on all four, and the legislature must in reality, whatever theoretical liberty it is supposed to retain, obey the mandate. There is to be no chance for reconsideration, no time for reflection or for second thought.

Those who supported this bill appeared to be under the pleasing delusion that no questions would find their way onto the ballot except those which made for the obvious improvement of society or those which advanced their own particular interests. There could be no more mistaken belief. Under this bill every sort of question would make its way onto the ballot. The only real condition is the 5,000 signatures, for 1,000 voters can suggest, and the duty of the officer who puts the question upon the ballot is purely ministerial, so that to obtain these 5,000 signatures would only mean the expenditure of a little time and a little money. The adroit and unscrupulous, with schemes for their own profit or with devices to injure their opponents, would be much more likely to get questions placed upon the ballot than anyone else. Propositions, which if adopted might do infinite injustice to the great body of our working people, could easily be framed so as to appear quite harmless and catch the popular vote. Then, if adopted, the legislature would be bound under the mandate by the powerful instinct of self-preservation and the innate desire of shifting responsibility, if not by the terms of the statute itself, to embody them in the law. I have seen it asserted that this

system would break the power of the "boss" and the lobbyist. On the contrary, it would give to those who make a business of politics and who seek legislation for their own profit an unrivaled opportunity, for they would be always prepared; they would have their 5,000 signatures always ready; they would shut out by dummy questions all others which they did not like and place upon the ballot questions artfully drawn to serve their own purposes. Where organization, money, and perfect readiness are all that are required, the professional with a personal or pecuniary interest at stake and untroubled by scruples will defeat and outwit the amateur and outsider nine times in ten. It is exactly because I trust the people and desire that they should have every advantage that I oppose such revolutionary legislation as this. To compel the people to legislate in a manner practically impossible for any very large body of voters is to do an injustice to the people themselves. It would be like compelling the people to decide by ballot on what they happened to read in the newspapers or hear from their neighbors whether a man was guilty of murder or not, and then find fault with them because they reached an erroneous decision. The people would not be to blame for the wrong decision, but those who forced upon them a method of trying a criminal case which in its very nature was utterly impossible in practice. Under this bill the people are to be asked to legislate by saying "yes" or "no" to any question, no matter how abstract or how complicated, which anyone can manage to have placed on the ballot. To deal with such questions by a categorical answer is absurd. It is the easiest thing in the world to frame a question to which a categorical "yes" or "no" is impossible. Take the familiar one, "Have you stopped beating your wife?" Answer it "yes" or "no" and see where it leaves you. Abstract questions can just as easily be framed to which a categorical "yes" or "no" would be utterly misleading, perilous, and unrepresentative. No people, no matter how intelligent, could legislate in such a way as this otherwise than disastrously. There would be no opportunity for modification or amendment, for repeated votes on different stages, or for debate. There would be but little chance for discussion, and good legislation without the opportunity for debate, amendment, and deliberate consideration is an impossibility. Less than one per cent of the voters of the Commonwealth would have under this bill the power to force upon ninety-nine per cent of the voters any kind of question they chose to devise and compel them to say "yes" or "no" to it. Thousands of voters either through indifference or still more through lack of opportunity to understand the question would refrain from voting, and an imperative mandate to the legislature might be carried by a small minority of the voters.

Let me ask your attention to some figures in order to give you a vivid idea of what I mean and to show how imperfectly "yes" and "no" votes, taken in this way, can be relied upon as reflections of the real will and true opinion of the people. These votes, which follow were given upon constitutional amendments, the most serious questions which can be submitted, because they involve changes in our organic law and were submitted with all the care and deliberation which the framers of our constitution could provide.

Popular votes upon articles of amendment to the constitution of Massachusetts.

Date.	Amendment.	Vote on amendment.			Vote for governor.	Not voting.
		Yes.	No.	Total.		
Nov. 4, 1890	Change of residence in the State not to disqualify a voter for certain offices for six months	97,177	44,686	141,863	285,526	143,663
	Certain soldiers, etc., not disfranchised who have received aid from town or not paid a poll tax	100,109	27,021	127,130		158,396
Nov. 3, 1891	Abolishing tax qualification for voters for governor, lieutenant-governor, and members of the general court	144,931	53,554	198,485	321,650	123,165
	A majority of each branch of the general court shall constitute a quorum	152,688	29,590	182,278		139,372
Nov. 8, 1892	Abolishing property qualification for office of governor	141,821	68,045	209,366	399,698	190,332
Nov. 7, 1893	Abolishing mileage to members of the general court	125,375	80,855	206,230	365,012	158,782
Nov. 6, 1894	Election of commissioners of insolvency abolished	114,499	34,741	149,240	335,354	186,114
Nov. 3, 1896	Biennial elections—Treasurer's term of office limited to three years	115,505	161,263	276,768	385,064	108,296
	Biennial election of senators and representatives	105,589	156,211	261,800		113,264
Nov. 5, 1907	Authorizing the governor, with the consent of the council, to remove justices of the peace and notaries public	178,005	35,989	213,994	373,695	159,701

I ask you to consider those figures, for they demonstrate the utter falsity of the proposition that you can reach a true expression of the opinion of the people of Massachusetts by the methods proposed in this bill. In no one of these ten instances did one-half, in most of them nothing like a half, of the actual voters of the State cast their votes on the amendments thus submitted. Of those who went to the polls, in three cases less than one-half voted either way on the amendments. In one case barely more than half voted, and in the remaining six more than a third to more than a quarter failed to vote either way. In no case was the amendment either carried or defeated even by a majority of those who went to the polls, far less by a majority of the voters of the State, and yet this list includes the vote on biennial elections, which was debated and discussed everywhere for many weeks.

Let me take another example from a neighboring State, the State of Maine.

Vote upon constitutional amendments and laws submitted to the people of Maine.

Year.	Amendment.	Vote on amendment.			Vote for governor.	Not voting.
		Yes.	No.	Total.		
1875	Election of State senators by a plurality vote	16,419	4,970	21,389	111,665	90,276
	Codification of amended constitution	17,841	3,104	20,945		90,720
1880	Election of governor by plurality	57,015	35,402	92,417	147,832	55,385
1884	Amendments to prohibitory laws	70,789	23,811	94,600	142,107	47,507
1888	Term of office of State treasurer	12,947	10,249	23,223	145,384	122,160
1892	Whether adjutant-general should be appointed or elected	9,721	9,509	19,230	130,962	111,732
	Educational qualification of voters	25,775	18,061	43,836		87,126
1900	Whether office of State auditor should be created	13,095	16,609	29,704	117,878	88,174
1904	Increasing compensation of members of the legislature	11,047	18,061	44,582	131,512	86,930

Let us examine this table as we did that of Massachusetts. In only two cases out of nine did more than half of the voters who went to the polls vote upon the question submitted, and in each of those cases a third of those who went to the polls failed to vote on the submitted question, quite enough in each case to have reversed the result. In five of the remaining seven less than a fifth of the voters who went to the polls, and in two only a quarter, voted on the submitted question.

The people of Maine and Massachusetts are of a high average of intelligence. They are active, alert, and have been for generations accustomed to deal with every form of political questions, and yet these tables show that even on constitutional amendments submitted on the ballot no expression could be obtained from a large majority of the voters, and as a rule not even from half of those who voted for governor and Representative. It is apparent, in other words, that the people of these States do not like to govern themselves in this way and that the very men who will vote for governor and Representative will not vote on submitted questions, because as a rule they do not feel that they have had proper opportunity to consider them and do not take a proper interest in them. Such a condition of things shows that to substitute legislation by ballot for legislation by representation is to cripple the rights of the people and permit interested, fanatical, or corrupt factions, by superior organization and intensity of purpose, to dictate the laws of the entire community.

These figures show the absolute truth of my assertion that questions submitted in this way are decided by a majority of a minority, and if this is true of constitutional amendments, fully and plainly stated, you can imagine what it would be on abstract questions, unknown, blind, uncomprehended, and incomprehensible. These figures show beyond a peradventure that no true public opinion can be obtained in this way, but that on the contrary this bill is a scheme to secure legislation which could not obtain the assent of the voters properly expressed through chosen and responsible representatives. It is a device to enable small and active minorities to obtain legislation which they could not secure by legitimate methods. Representatives represent the whole people. This bill would force upon us a government by a fraction of the people and would defeat the will of the real majority of the people themselves.

Yet the legislature would have no choice. They would be bound in conscience and in practice, if not by the words of the statute, bound in a manner and forced by a pressure from which there would be no escape, to obey the mandate no matter how obtained, and no man could tell in what form of law the mandate would be finally embodied. The chances are that the law under the pressure of the mandate would be the work of extremists and contrary to the wishes even of those who voted "yes" on the abstract proposition. There could be no greater travesty on popular government than a system which would permit a majority of a minority of the voters to force upon the state any law they chose. It would give an enormous opportunity to the power of money skillfully and corruptly used. It would impair the rights of the people and leave those of the individual naked and defenseless. The result would not be an expression of the popular will,

but a mechanical parody of that will so gross that even its authors would gaze upon it with amazement and disgust.

All these plans to make the people carry on their government by impracticable methods are not only unjust and dangerous to the people and to the public welfare, but they tend to bring all popular government into discredit. Do not misunderstand me. I attach no superstitious reverence to forms of government. I make no fetich of laws and constitutions, for constitutions are made for men, not men for constitutions. I have no patience with the theory held by some persons and often pernicious in its activity that human nature can be changed and all men made virtuous and happy by statute. People, according to my observation, get in the long run the government they desire and deserve, and if they suffer from bad government, it is because they are too inert or too incapable or too timid or perhaps too corrupt to secure anything better. Government and the success of government in the last analysis depend on the character of the people themselves. People with a high capacity for self-government will make a bad system work well or at least tolerably well, while people without that capacity will come to confusion and ruin under the most ideally perfect system which the wit of man can devise. But while it is profoundly true that people make laws, not laws people, the importance and effect of laws, constitutions, and political institutions are none the less very great. The essential point is to comprehend in what that importance consists and to gauge rightly the effect and educational force of laws and constitutions; in a word, to realize what laws can and what they can not do. We must not forget that if statutes can not change the laws of nature, it is equally a mistake to accept the Quietist doctrine of Pope when he said in his familiar lines:

> For forms of government let fools contest;
> What e'er is best administered is best.

Allow me now to illustrate my meaning. Wise economic laws affecting the currency or the tariff can not of themselves make prosperity. They can help very greatly to bring prosperity if a people be energetic and industrious and other conditions are favorable, but alone they can not do it. On the other hand, bad economic laws, especially such as affect the circulating medium, can unaided and alone bring panic and disaster. To state this as a general proposition, we may say that while the effect of good economic laws for good is limited, the effect of bad economic laws for evil is unlimited. The power of economic statutes to injure is much greater than their power to benefit.

This rule applies not only to all economic legislation but to all laws. There is no panacea for human ills to be found in statutes. Statutes may help greatly, they may and do modify and alleviate and improve evil conditions, but there their possibilities end, and many misfortunes have happened to mankind from the mistaken conception of the possibility of statute making. On the other hand, the power of bad laws to bring on ruin, disaster, civil strife, and the downfall of governments and nations is practically unbounded. It is, then, of the last importance to consider carefully what the full effect of any law will be and not open the door for the sake of an apparent remedy for some

special evil to a thousand worse evils which might involve all in a common disaster. Therefore laws not only assume a vast importance, but also the methods and instrumentalities by which they are made. Good laws are not to be expected if you impose conditions upon their making incompatible with good results. The best glazier in the world can not cut a square of glass if you insist that he shall do it with a broadax or a pointed stick. Under such conditions he would merely smash the glass, and you and not he would be to blame. You must give him a diamond point, and you will get your window pane. You can impose conditions on a people under which it will be impossible for them to secure good legislation, and it will not be any reflection upon them or their capacity for self-government if they bring forth laws which work a ruin and disaster as widespread as they are needless. It shows no more distrust to insist that the people shall use wise and well-tried methods of legislation to obtain the laws they desire than it shows distrust of the glazier to insist that he shall use a proper tool to cut his square of glass.

I have heard it asked whether those who opposed this bill thought that the American people had ever decided a great question wrongly. My answer would be "no" so far as concerns all the greatest questions of our history which have been decided by the people on full consideration and under the conditions prescribed by our constitutions and laws. The Revolution, the adoption of the Constitution, the preservation of the Union, the abolition of slavery, the integrity of the public debt, the maintenance of the gold standard, all these great questions were decided by the people rightly and nobly, but only after years of discussion and under the conditions of representative government.

If, on the other hand, you ask me if the popular decision in a moment of excitement and clamor, with no opportunities for deliberate discussion, has always been right, I answer "no," and I will give you an example from the history of this State. A little more than fifty years ago there was a movement here called the Native American or Know Nothing movement. It was carried on by secret oath-bound organizations. They not only swept the State and crushed Whigs and Democrats out of existence, but they actually elected all but two of the members of the legislature. If they had not been restrained by the Constitution and the laws and the methods of representative government, they would have excluded from citizenship every man of foreign birth or of a different religion from their own. If they had been acting under a popular mandate, which would have been easily obtained in that year, to the effect that only citizens of American birth and of the Protestant faith should be entitled to citizenship, that constitutional change would have been made. But as there was no public-opinion law the legislature was only bound to the general principles of their party; they were not deprived of motion and sense by a mandate. They were open, even with all their power, to the effect of public opinion expressed by a strong minority outside, and they had time for reflection and for cooling down. Thus, by the forms of representative government and by the absence of anything resembling the mandate for which the public-opinion bill provides, they were held back from the violent extremes which the passions flagrant at the election would have demanded and enforced.

I think it was very fortunate that they were so restrained, because the decision of the people at the polls in that year of passion and excitement was, in my opinion, utterly wrong, when tried by the true principles of free American government. In a few years everyone else thought so, too, after the madness had passed. You say such things could not happen to-day. I hope not, but human passions have not changed, and in moments of excitement men are capable of acts which, on reflection, they would not entertain for a moment. It is to secure ample opportunity for deliberation and reflection that representative government exists and it is inconceivably precious not only to the individual man, whose rights are at stake, but to the wider interests of the whole community.

I trust the people fully. I believe, what the authors of the bill deny, that they are able to choose their own representatives and to control them. I do not think the people are so weak or so stupid that they can not choose men who will fitly represent them, and that they can not reject their representatives if those representatives do not perform their duties. I think the people are eminently capable of governing themselves by proper methods, and that their power should not be distorted and crippled by impossible devices. But the great and fundamental objection to this bill is the destruction of the representative principle which it necessarily involves. When that is broken down nothing remains but the executive and the courts. With the representatives deprived of power the courts would not long retain their independence, and when the executive department alone survives we are well on the road to despotism. The resort to the Plebiscite is the favorite device of the usurper and saviour of society. His opportunity comes when disorder, license, and wild legislation have driven the mass of men to a readiness to sacrifice liberty in the determination to have peace and order, a sad and desperate situation, familiar, unhappily, in the world's history. Moreover, the advent of the strong man and the army are always coincident with the breaking down of representative government. What we want above all things is to preserve the representative bodies which have ever been the guardians of freedom and of popular liberties in this country. I trust the people so thoroughly that I believe they can conduct their government with honor and success, as they have done for so many generations. Times change and conditions change with them. We must meet the new times and the change in conditions with the legislation which they demand, but in dealing with our new problems it is not necessary to cast away the instruments by which every reform and every improvement has hitherto been effected. I am not one of those who believe that all wisdom died with our forefathers. I am equally far from believing that all wisdom was born yesterday. This is not a new question, but involves the oldest theories of government, and here, if anywhere, history and experience are safe and illuminating guides which only ignorance and folly would neglect or disregard. The great men who framed our Constitution provided both in state and nation for checks and balances because they believed that the rights of the people could only be protected if every possible safeguard was thrown around the law-making power. They believed that that power ought only to be exercised with the utmost care and deliberation, and in seeking

that care and deliberation they believed that they were protecting the rights of the people. They saw in hasty legislation great perils, and they never had the slightest fear that the legislative body would not respond quickly enough to the popular wishes. They had a great dread of executive power and a deep desire to protect the rights of minorities. The majority, they believed, ought to rule, but they wished to be very sure that majority rule should not be rashly or hastily exercised. They wanted the members of a majority to remember that they might find themselves any day in a minority, and therefore they took the utmost pains to secure every opportunity in legislation for debate and amendment.

> They wished men to be free,
> As much from mobs as kings, from you as me.

Experience has shown us the justice of their opinions. This bill invites us to cast aside all that they did, break down every method of lawmaking which they established, and reject that principle which they most valued, the principle of representation. I say, reject the principle of representation, because when you impair it and take from your representatives all power and all responsibility, the principle of representation falls. No men invested with the power to make laws, but relieved of all responsibility for the laws they make, are to be trusted. We may change many things, we may abolish laws and put new ones in their place, but we can not alter the fundamental principles of our government and expect the fabric to stand. If we undermine and overthrow the bulwarks of ordered liberty and individual freedom, the citadel itself will not long survive. Any measure which breaks down free representative government, advances us proportionately on the road to executive government, to the rule of one man. This Public Opinion Bill will reduce the representative on one question after another to the level of a machine. As the representative principle sinks the executive power rises. I believe in maintaining both and maiming neither. I am opposed to crippling and extinguishing representative government. I love freedom and hate tyranny, and anything which depresses the one and opens the road to the other will meet with resistance from me. It is for this reason that I oppose this bill.

Public Opinion Bill as Reported to the House of Representatives of Massachusetts at the Last Session of the Legislature.

AN ACT To authorize the submission to voters, on official ballots at State elections, of questions of public policy.

Be it enacted by the senate and house of representatives in general court assembled, and by the authority of the same, as follows:

SECTION 1. On a request signed by one thousand voters, asking for the submission of any question for an expression of opinion and stating the substance thereof, the secretary of the Commonwealth shall transmit such request to the State ballot law commission, who shall determine if such question is one of public policy, and if they so determine, shall draft it in such simple, unequivocal, and adequate form as they may deem best suited to secure a fair expression of opinion. Thereupon the secretary shall prepare and furnish suitable forms, each to contain spaces for not more than one hundred signatures, and if such forms shall be signed by five thousand voters, he shall upon the fulfillment of the requirements of this act place such question on the official ballot to be used at the next State election. Forms shall bear the date on which they are issued, and no applications made on forms issued more than twelve months before the election concerned shall be received.

SEC 2. Signers of requests for the issuance of forms and signers of applications shall append to their signatures their residence, with street and number, if any, and shall be certified as registered voter by the proper registrars of voters. One of the signers to each paper shall make oath of the genuineness of the signatures thereto, and a notary public, justice of the peace, or other magistrate, when taking such oath, shall satisfy himself that the person to whom the oath is administered is the person signing such paper, and shall so state in his attestation of such oath. All provisions of law relating to nomination papers shall apply to such requests and applications as far as may be consistent.

SEC. 3. Applications shall be filed with the secretary sixty days before the election at which the questions are to be submitted. Not more than four questions under this act shall be placed upon the ballot at one election, and they shall be submitted in the order in which the applications are filed. No question negatived, and no question substantially the same, shall be submitted again in less than three years.

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60TH CONGRESS, 1st Session } SENATE { DOCUMENT No. 115

PERSONNEL OF THE NAVY AND MARINE CORPS

APPOINTMENTS OF BOARDS TO MAKE RECOMMENDATIONS IN REGARD TO THE DIFFERENT STAFF CORPS OF THE NAVY AND MARINE CORPS AND REPORTS OF THE SAME

DECEMBER 18, 1907

Presented by Mr. Hale and ordered to be printed as a document

JANUARY 7, 1908

Ordered reprinted with additional matter

WASHINGTON

GOVERNMENT PRINTING OFFICE

1908

IN THE SENATE OF THE UNITED STATES,
January 7, 1908.

Ordered, That Senate Document Numbered One hundred and fifteen, Sixtieth Congress, First Session, "Personnel of the Navy and Marine Corps," be reprinted, with additional matter included.

Attest:

CHARLES G. BENNETT,
Secretary.

PERSONNEL OF THE NAVY AND MARINE CORPS.

NAVY DEPARTMENT,
Washington, August 31, 1906.

SIR: A board is hereby appointed, consisting of yourself as president, and the following-named officers as members: Medical Director George E. H. Harmon, U. S. Navy, Surg. James F. Leys, U. S. Navy, for the purpose of examining such existing laws relating to the personnel of the Navy as affect the officers of the Medical Corps, and to determine whether, in the judgment of the board, it would be desirable in the interests of the efficiency and economy to make any changes in, additions to, or omissions from such laws, having due regard for justice and for the interests of the officers of the corps.

The report of the board, embodying its conclusions, will be made to the Department as soon as practicable, but not later than October 1, 1906. It is the purpose of the Department to refer this report to the Personnel Board, of which Hon. Truman H. Newberry, Assistant Secretary of the Navy, is president, for consideration.

The board will hold itself in readiness to consider and comment upon such portions of the report of the Personnel Board as may be referred to it from time to time by the Department.

The board will hold its sessions at such time and places as the president of the board may designate.

The members of the board have been directed to report by letter to you for this duty.

You are hereby authorized to perform such travel as may be necessary in the proper performance of this duty. Keep a memorandum of the travel so performed, certifying to its necessity, and submit the same to the Department for its approval.

This is in addition to your present duties.

Respectfully,

TRUMAN H. NEWBERRY,
Acting Secretary.

Surg. Gen. PRESLEY M. RIXEY, U. S. Navy,
Chief of the Bureau of Medicine and Surgery,
Navy Department, Washington, D. C.

DEPARTMENT OF THE NAVY,
BUREAU OF MEDICINE AND SURGERY,
Washington, D. C., October 1, 1906.

SIR: In obedience to your order of August 31, 1906, appointing us a board for the purpose of examining such existing laws relating to the personnel of the Navy as affect the officers of the Medical Corps, and to determine whether, in the judgment of the board, it would be desirable in the interests of efficiency and economy to make any

changes in, additions to, or omissions from such laws, having due regard for justice and for the interests of the officers of the corps, we beg leave to submit the following report:

We recommend the enactment of legislation reorganizing the Medical Corps of the Navy, with titles and numbers in the various grades as follows: Officers of the Medical Corps to be recommissioned with these titles and to be so addressed in orders and official communications.

One rear-admiral and Surgeon-General, with the rank of a rear-admiral of the upper 9 numbers in the line of the Navy and the pay and allowances of a major-general in the Army, appointment to be made as at present. An assistant to the Bureau to be appointed as now provided by law.

Three rear-admirals, Medical Corps, with the rank of a rear-admiral of the lower 9 numbers in the line of the Navy and the pay and allowances of a brigadier-general in the Army. This is a new and distinct grade. Promotion to this grade to be made from the grade of captain, Medical Corps (present medical directors); to be nominated by the President upon the recommendation of the Surgeon-General of the Navy, founded upon the record of the officer for special efficiency and approved by the Secretary of the Navy. This new grade, we believe, is well justified.

(1) There is need of a special supervisory inspection of naval hospitals, naval stations, public buildings being erected for the Navy, and new vessels under construction, which should be more thoroughly carried out, looking to general efficiency and improvement in the hygienic requirements of the Navy. One of the three officers in this grade should be stationed on the Atlantic and one on the Pacific coast, the latter including in his supervisory duties the Philippines and other island possessions and the naval hospital at Yokohama; the third to be attached to the Bureau of Medicine and Surgery and to be also a member of the General Advisory Board of the Navy.

(2) This new grade would afford an opportunity for a small and limited number of captains, Medical Corps (present medical directors), of exceptionally good records, to retire in the higher grade, a just and well-merited reward for a limited number of such officers.

(3) The number of officers proposed for this new grade is less than the percentage of officers of flag rank in the line.

Twenty captains, Medical Corps (present medical directors), an increase of 5. This is less than the percentage of captains in the line of the Navy. There has been no increase in this grade since its origin in 1870, when its number was fixed in proportion to the number of captains in the line. The personnel of the Navy has been increased meantime several times, and the Medical Corps itself doubled by additions to the three lower grades only—no increase having been made in the grades of medical director and medical inspector. The increase here recommended would not only supply officers who are needed in command of naval hospitals, as members of boards, and for other duties requiring officers of rank and experience, but would operate to afford a flow of promotion and to improve the inducements which the Navy is able to offer to young medical men to enter its service.

Twenty-five commanders, Medical Corps (present medical inspectors). This is an increase of 10, which is still a less percentage than

of commanders in the line. This increase is demanded in order to supply enough officers for the duties of fleet surgeons at sea and at important stations at home and abroad which require medical officers of this grade; also as opening up a relief to some extent to the older surgeons at the top of the list, whose promotions have been long deferred. The inadequate number of medical officers of this grade has rendered it necessary of late to detail surgeons as fleet surgeons and to other posts of duty at home and abroad which should be filled by medical inspectors.

One hundred lieutenant-commanders, Medical Corps (present surgeons). This is an increase of 15, and is a greater percentage in this grade than that of lieutenant-commanders in the line at the present time. We believe this increase is necessary to provide a sufficient number of this grade to meet the increased and urgent needs of the service. On January 31, 1906, there were 35 surgeons on seagoing ships and 8 on foreign stations that count as sea duty, making a total of 43, leaving 44 surgeons for other than sea duty. Of these, 39 were at shore stations, 3 were on sick leave, 1 was returning from sea, and 1 was waiting orders. It thus appears that all the medical officers in the grade of surgeon, with the exception of 5, were on duty, either at sea or on shore stations. There were 16 surgeons to be relieved from duty on seagoing ships and foreign stations and 10 to be supplied to ships going into commission, making a total of 26 required for sea duty in 1906. Of the 26 necessary to relieve those whose sea service was about to expire and for ships to be commissioned during the year, not one would have been two years on shore duty. With the present number of surgeons the shore duty of these officers is being gradually shortened, and proper leave of absence upon return from a full cruise is not practicable. Sea duty, with its privations, is increased, and therefore conditions which have always operated to make the naval service unpopular as a career for young medical officers are intensified. Not only are there many important duties ashore requiring the services of surgeons, but it is necessary to their efficiency that their tours of shore service between cruises should be of reasonable length, that they may be enabled to keep abreast of progress in their profession. With the proposed increase of 15 surgeons the margin of those available for sea duty will be small, in view of emergencies, of the 5 per cent of ineffectives which must be allowed for illness, and of the additions to the fleet and personnel. In this connection it should be remarked that there are at present seven shore stations requiring surgeons which are now filled by retired officers whose services will not be available in 1912.

The rearrangement here proposed creates one grade of 3 junior rear-admirals, increases the three upper grades now existing by 5 medical directors, 10 medical inspectors, and 15 surgeons, but does not increase the total number of medical officers now allowed by law.

One hundred and ninety-seven lieutenants and lieutenants (junior grade) Medical Corps (present passed assistant and assistant surgeons). Appointment and promotion as at present.

THE FLEET SURGEONS.

Section 1373, Revised Statutes, provides for the detail of fleet surgeons by the President. This should be definitely construed to give the medical officer so detailed all the rights and privileges of his office,

and require of him the performance of all his duties. Incidents have repeatedly arisen wherein the commander in chief has practically ignored the surgeon of the fleet and assigned him to duty and quarters on other than the flagship. The duties of his office have frequently been neglected and ignored, and their importance minimized. The fleet surgeon should, in strict interpretation of existing law, be recognized as the medical adviser of the commander in chief. His duties should be defined by regulation to include all such administrative sanitary matters as are outlined for the Medical Department in articles 1168a and 1168b, United States Navy Regulations, 1905, as amended, so far as these are applicable to the fleet; and he should be required to make complete reports to the Bureau of Medicine and Surgery, through official channels, in accordance with his prescribed duties.

We recommend the enactment for the Navy of the voluntary thirty-year retirement law now in effect in the Army and Marine Corps.

We further recommend the enactment of a law allowing an officer entitled to promotion, and found upon examination to be physically disqualified from causes incident to the service, to be retired with the rank and three-fourths of the pay of the next higher grade.

In view of the fact that matters may later be referred to the board or brought to its attention, which are not herein referred to, the board may find it desirable in such case to submit other recommendations than those included in this preliminary report.

Very respectfully,

P. M. RIXEY,
Surgeon-General U. S. Navy,
President of the Board.

The SECRETARY OF THE NAVY.

NAVY DEPARTMENT,
Washington, August 31, 1906.

SIR: A board is hereby appointed consisting of yourself as president and the following-named officers as members: Pay Inspector Frank T. Arms, U. S. Navy, Pay Inspector Samuel McGowan, U. S. Navy, for the purpose of examining such existing laws relating to the personnel of the Navy as affect the officers of the Pay Corps and to determine whether, in the judgment of the board, it would be desirable, in the interests of the efficiency and economy, to make any changes in, additions to, or omissions from such laws, having due regard for justice and for the interests of officers of the corps.

The report of the board, embodying its conclusions, will be made to the Department as soon as practicable, but not later than October 1, 1906. It is the purpose of the Department to refer this report to the Personnel Board, of which Hon. Truman H. Newberry, Assistant Secretary of the Navy, is president, for consideration.

The board will hold its sessions at such time and places as the upon such portions of the report of the Personnel Board as may be referred to it from time to time by the Department.

The board will hold its sessions at such time and places as the president of the board may designate.

The members of the board have been directed to report by letter to you for this duty.

You are hereby authorized to perform such travel as may be necessary in the proper performance of this duty. Keep a memorandum of the travel so performed, certifying to its necessity, and submit the same to the Department for its approval.

This is in addition to your present duties.

Respectfully,

TRUMAN H. NEWBERRY,
Acting Secretary.

Paymaster-General HENRY T. B. HARRIS, U. S. Navy, Retired.
Chief of the Bureau of Supplies and Accounts,
Navy Department, Washington, D. C.

WASHINGTON, D. C., *September 29, 1906.*

SIR: 1. In obedience to the Department's order of August 31, 1906, the board of pay officers therein appointed submits this preliminary report embodying a brief statement of its views as to the needs of the corps. Some of the ideas herein advanced may be in a measure modified in consequence of possible action by the Personnel Board and of questions submitted by it to this board for consideration. The propositions now presented, together with such others as may be later determined upon, will, when necessary, be elaborated into a more explicit outline of the laws needed to bring about the desired changes.

2. Meanwhile it is suggested that legislation along the following lines be given consideration:

A. That the number of pay officers in the Navy at all times equal 20 per cent of the number of commissioned line officers.

B. That to be eligible for entry into the Pay Corps a candidate be at least 24 but not yet 30 years old.

C. That (with the exception of the Paymaster-General, whose rank should be senior rear-admiral) the maximum rank in the Pay Corps be captain and the minimum rank lieutenant (junior grade).

D. That the grades of captain and commander in the Pay Corps consist, respectively, of the same percentages of the whole corps as the numbers in these grades in the line are, respectively, of the whole number of line officers.

E. That, except in so far as it might conflict with the suggestion contained in paragraph "C," the rank of each officer in the Pay Corps below the grade of commander be the same as that of the line officer whose date of precedence is the same as (or next prior to) his own.

F. That pay officers of the Navy be placed on the same plane in respect to titles as pay officers of the Army and Marine Corps; and that the present grade names (assistant paymaster, passed assistant paymaster, paymaster, pay inspector, and pay director) be abolished.

G. That the Army law for retirement after thirty years' service be made to apply to pay officers of the Navy.

H. That paymasters' clerks be given temporary warrants, right to retirement, and benefits of accumulated service, as proposed in Senate

bill No. 6413, introduced January 9, 1905, by the chairman of the Committee on Naval Affairs.

Very respectfully,

H. T. B. HARRIS,
Paymaster-General, U. S. Navy.
F. T. ARMS,
Pay Inspector, U. S. Navy.
S. MCGOWAN,
Pay Inspector, U. S. Navy.

The SECRETARY OF THE NAVY.

WASHINGTON, D. C., *October 31, 1906.*

SIR: In elaboration of its preliminary report, dated September 29, 1906, the board of pay officers (appointed by the Department's order of August 31, 1906) desires to bring to the attention of the Personnel Board the principal reasons upon which its several recommendations in said preliminary report were based.

A. That the number of pay officers in the Navy at all times equal 20 per cent of the number of commissioned line officers.

The number of officers now in the Pay Corps is approximately 20 per cent of the number of officers in the line from ensign to rear-admiral. As the Navy is enlarged or reduced, and there is consequent increase or decrease in the number of line officers, a proportionate increase or decrease in the number of pay officers would naturally be required. By the plan suggested this would take place automatically, maintaining the corps at a strength commensurate with the needs of the service and also making it impossible for another "hump" to occur by reason of a large number of pay officers having entered at or about the same time.

The percentage should be based on the number of line officers on the active list on July 1 of each year, because at that time the line has been reduced to its minimum strength after the usual retirements have been made for the year; and, as the minimum number represents practically the total effective strength, the minimum should of course govern.

B. That to be eligible for entry into the Pay Corps a candidate be at least 24, but not yet 30 years old.

Few young men of 21, 22, or 23 have the experience, business training, and education desirable in a candidate for the Pay Corps, and it is believed that a much more eligible and adaptable class of men can be reached by raising the minimum age to 24 and extending the maximum to 30.

The first duty of a newly appointed assistant paymaster is usually that of pay officer of a ship, and not as assistant to an older pay officer; as such he has charge of the disbursement of many thousands of dollars in money and stores. In civil life a position involving such money responsibility and requiring judgment and knowledge of business methods would most probably be filled by a man with years of experience; and it is just to neither the officer nor the Government to give a young man duties and responsibilities which, from his youth and inexperience, he can not be expected properly to discharge.

At 24 a man's character has generally passed the formative stage, and his probable aptitude for and his future value to the service can, therefore, be determined much more accurately by an examining board than it could have been determined three years before.

C. That (with the exception of the Paymaster-General, whose rank should be senior rear-admiral) the maximum rank in the Pay Corps be captain, and the minimum rank lieutenant, junior grade.

On account of the status which he occupies and the responsible duties which he performs, the chief of any Bureau should undoubtedly have the rank of senior rear-admiral, with the pay and allowances thereto pertaining. As the law now stands, Bureau chiefs have the rank of a major-general, with the pay and allowances of a brigadier-general.

With the single exception of the Paymaster-General, it is not deemed necessary at this time to confer higher rank than that of captain upon pay officers on the active list, because the nature of their duties is not such as to require it. With the same idea of equity borne in mind, it would seem that the changing of the minimum rank of the Pay Corps to that of lieutenant junior grade would be equally just and reasonable and, indeed, to follow as a natural corollary to the increase of the age limit A man of 24 or more who is already established in business will scarcely abandon a career, perhaps already auspiciously started, for the rank and pay of ensign; and, if the present entrance rank be not increased, desirable men will be increasingly difficult to obtain (as is shown by the case of the civil engineers) and increasingly difficult to retain (as is shown by the case of the naval constructors).

Theoretically, if the pay officer "knows his business," it is of no real importance whether he wears two stripes or one; practically and actually, in any military organization, however, in the latter case, he works at a distinct and always present disadvantage, every person with whom he comes in contact considering that, with his lower rank, he is necessarily less worthy of notice and respect than the other heads of department who are his seniors.

It would, therefore, seem altogether proper to originally commission pay officers with the rank of lieutenant junior grade, so that they enter the service with the same rank and pay as officers of the construction corps, civil engineer corps, and Medical Corps of the Navy; the reasons which determined the entrance rank in these several corps being equally applicable to the Pay Corps. Indeed, the Pay Corps of the Navy is at present the only staff corps in the entire service (Army, Navy, and Marine Corps) in which the initial rank is that of ensign.

D. That the grades of captain and commander in the Pay Corps consist, respectively, of the same percentage of the whole corps as the numbers in these grades in the line are, respectively, of the whole number of line officers.

This clause is essentially restrictive, and is necessary in order to prevent the unduly rapid promotion of officers of the Pay Corps into the two higher grades. It is believed that, whatever may be the increase in the Navy and the consequent increase in the important duties usually assigned to the senior officers of the Pay Corps, not more than the proportion herein indicated as the limit for these grades will be needed. Without such a clause as this, it might occur that, upon the promotion of a certain line officer to the rank

of commander, he would carry with him to the grade of commander in the Pay Corps as many as 30 officers who were all appointed during one year, and thus render them practically unavailable for certain duties for which they might be needed. The principal aim is to keep the main body of the corps in the grades of lieutenant junior grade, lieutenant, and lieutenant-commander; and, in so far as these grades are affected, to have officers of the Pay Corps follow absolutely their opposite numbers in the line. But it is not considered desirable or expedient to ask for the same automatic promotion to the grades of commander and captain, for it is believed that promotion to these grades should be so restricted that no more than the proportional number indicated in this recommendation can be included in either of these grades at any time.

E. That, except in so far as it might conflict with the suggestion contained in paragraph "C," the rank of each officer in the Pay Corps below the grade of commander be the same as that of the line officer whose date of precedence is the same as (or next prior to) his own.

In the light of the restriction imposed in "D", the propriety of this suggestion would seem to be manifest. It is only asked that a pay officer, upon entry as a lieutenant junior grade, be promoted from time to time as is the officer of the line who is commissioned at the same time; and this only through and out of the grade of lieutenant. According to this provision, a pay officer entering the same day as a line officer remains in the grade of lieutenant junior grade while the line officer passes to and through the rank of lieutenant junior grade; and, only when the line officer is promoted to the grade of (senior) lieutenant can the pay officer obtain his first promotion. He then remains in the grade of lieutenant until the line officer is promoted to be a lieutenant-commander. Although, on account of being an older man, and for reasons stated in the notes on "C," the pay officer enters in the grade of lieutenant junior grade, he must "mark time" in that grade until the ensign commissioned with him has overtaken him. The pay officer never can outstrip the line officer in promotion; in fact, he must again "mark time" in the grade of lieutenant-commander when his opposite number in the line is promoted to the grade of commander—unless, of course, there be a vacancy in that grade for the pay officer, in which event only he also might be advanced.

Ever since the Pay Corps was established there have been periodical "humps." Shortly after the civil war the grades of pay director and pay inspector were filled by very young men, who remained at the head of the corps while their less fortunate fellow pay officers "marked time" for a corresponding period as assistants and passed assistants. The officers who entered the corps shortly after the civil war are now rapidly being retired, resulting in the promotion of comparatively young men into the grade of pay inspector and (will be) soon into the grade of pay director; and, within a few years, the corps will find itself in precisely the same condition as it was during the years from 1865 to 1892, except that the average age will be somewhat higher.

This condition does not exist in the line because ensigns are promoted after three years' service and on up through to the higher grades as vacancies occur. The personnel bill of March 3, 1899, was designed especially to provide a sufficient number of retirements for

the sole purpose of insuring promotion within a reasonable time to the younger officers; but no such remedial legislation has been enacted for the Pay Corps. Its officers have thus far been required to "mark time" in all grades alike. The proposed change would insure a healthy and natural flow of promotion for younger officers up to a certain point; so that they could, by efficient work and good behavior, look forward to attaining at least a reasonable rank within a reasonable time.

Calculated on the basis of retirements for age alone, the six junior assistant paymasters now in the Navy will, under existing law, not be promoted to the grade of passed assistant paymaster for nearly thirty years, while in that time their opposite numbers in the line will have reached command rank, as is shown by the following table:

Period of time.	Years.	Rank of line officer.	Rank of pay officer.
August, 1906, to August, 1909	3	Ensign	Ensign.
August, 1909, to February, 1910	½	Lieutenant junior grade	Lieutenant junior grade.
February, 1910, to July, 1921	11	Lieutenant	Do.
July, 1921, to July, 1932	11	Lieutenant commander	Do.
July, 1932, to July, 1936	4	Commander	Do.
July, 1936, to January, 1938	2	Captain	Lieutenant.

The officer who is at present at the foot of the grade of assistant paymaster will, according to the foregoing estimate, not become a passed assistant paymaster until he is 56 years old.

The present Pay Corps grades, which operate merely as barriers, should be removed at once, so as to allow promotion step by step, the line and Pay Corps receiving alike the same benefit for the same length of service up to and including the grade of lieutenant-commander.

F. That pay officers of the Navy be placed on the same plane in respect to title as pay officers of the Army and Marine Corps, and that the present grade names (assistant paymaster, passed assistant paymaster, paymaster, pay inspector, and pay director) be abolished.

The very wording of this suggestion carries the argument with it, as the manifest propriety of placing naval pay officers on an equal footing with pay officers of the Army and Marine Corps must be obvious to anyone who knows that the duties of naval pay officers include all the duties ever performed by pay officers of the Army and Marine Corps (and, in addition, all the duties of quartermasters and commissaries) and who realizes that pay officers of the Navy form an integral part of the fighting force afloat, doing duty of a strictly military character (in the powder division), and are, when at sea, always "on the firing line," where pay officers of the Army and Marine Corps are never required to be.

The rank conferred upon pay officers of the Navy is bestowed in the same manner, by the same authority, and in the same terms as that given to pay officers, quartermasters, and commissaries in the Army and Marine Corps. That this rank should, in any conceivable sense or in regard to any of its various attributes, be taken to mean nothing in the case of the naval pay officer is, to say the least, discriminative, for it can not mean as much and carry with it as much as does the same rank conferred upon like officers of the Army and Marine Corps so long as it be accompanied by a proviso that the fact of its possession must not be expressed in words. An officer of the

Naval Pay Corps, commissioned by the President, "by and with the consent of the Senate," receives thereby a certain rank—the definition of his official caste or status—yet he must take care that the fact be never stated in any official paper (emanating from him) and that he be not at any time addressed by the title indicative of the rank he legally holds; that is to say, he must not by any words—either spoken or written—himself reveal or allow to be by others attested the fact that such rank has been conferred upon him. A pay officer of the Army or Marine Corps, on the other hand, commissioned in identically the same language, is not only allowed but required to state his rank after his signature upon all official papers, and is (by sec. 1212, Rev. Stat.) entitled to receive and actually does receive the recognition of that rank in the style of his official address and salutation, both verbal and in writing. The inevitable result of such distinction between officers of different arms of the same service is, of course, discontent in the Navy; and it is undeniable that a contented man can invariably be looked to for better and more productive work than the same man if discontented.

It is not intended to merely borrow the titles indicative of rank without corps and which have been used exclusively by the line of the Navy. Indeed, this board can not in too emphatic and unequivocal language disclaim and disavow any desire to appropriate "line titles," it being distinctly understood that such titles as are hereinbefore proposed are intended to specifically show the branch of the service to which the pay officer belongs. All that is asked for the Naval Pay Corps is exactly the same as, and no more than, has long been enjoyed, without detriment to anyone, by corresponding officers in the Army and Marine Corps.

While it is by no means desired to omit in pay officers' titles all reference to a corps to which it is an honor to belong, it is nevertheless believed to be but right that the title of every pay officer should, in addition, contain specific mention of the legal rank conferred by his commission. Until this be done such rank must remain not only with an ever-present cloud upon its title, but with a constantly asked and never satisfactorily answered question as to its very existence.

G. That the army law for retirement after thirty years' service be made to apply to pay officers of the Navy.

As officers of the Army and Marine Corps are permitted to retire after thirty years' service, uniformity throughout the service would seem to require that it be applied to the Navy, the conditions which necessitated such a law for the Army and Marine Corps being practically identical throughout the Navy, and thus affording apparently ample reason for the proposed extension of the provisions of this law.

H. That paymasters' clerks be given temporary warrants, rights to retirement, and benefits of accumulated service, as proposed in Senate Bill No. 6413, introduced January 9, 1905, by the chairman of the Committee on Naval Affairs.

To be a competent clerk a man must be a skilled accountant and a practical business man. He has many of the duties and most of the disadvantages of both an officer and an enlisted man, yet none of the rights of either.

While commissioned officers, warrant officers, petty officers, and enlisted men have, during recent years, all received more or less con-

sideration at the hands of Congress, not for a long time has one line of any act contained a provision for the relief of paymasters' clerks. For the purpose, therefore, of attracting a more desirable class of men, and in order to accord such men, when secured, a measure of simple justice, it is believed that the Hale bill can well be adopted in its entirety as affording a reasonable and most conservative settlement of this very important question.

Very respectfully,

H. T. B. HARRIS,
Paymaster-General, U. S. Navy.
FRANK T. ARMS,
Pay Inspector, U. S. Navy.
S. MCGOWAN,
Pay Inspector, U. S. Navy.

The SECRETARY OF THE NAVY.

NAVY DEPARTMENT,
Washington, October 13, 1906.

SIR: A board is hereby appointed, consisting of yourself as president and the following-named officers as members: Chaplain Frank Thompson, U. S. Navy, Chaplain Matthew C. Gleeson, U. S. Navy, for the purpose of examining such existing laws relating to the personnel of the Navy as affect the officers of the corps of chaplains, and to determine whether, in the judgment of the board, it would be desirable in the interests of the efficiency and economy to make any changes in, additions to, or omissions from such laws, having due regard for justice and for the interests of officers of the corps.

The report of the board, embodying its conclusions, will be made to the Department as soon as practicable, but not later than October 22, 1906. It is the purpose of the Department to refer this report to the Personnel Board, of which Hon. Truman H. Newberry, Assistant Secretary of the Navy, is president, for consideration.

The board will hold itself in readiness to consider and comment upon such portions of the report of the Personnel Board as may be referred to it from time to time by the Department.

The board will hold its sessions at such time and places as the president of the board may designate.

The members of the board have been directed to report by letter to you for this duty.

You are hereby authorized to perform such travel as may be necessary in the proper performance of this duty. Keep a memorandum of the travel so performed, certifying to its necessity, and submit the same to the Department for its approval.

This is in addition to your present duties.

Respectfully,

TRUMAN H. NEWBERRY,
Acting Secretary.

Chaplain HENRY H. CLARK, U. S. Navy,
United States Naval Academy, Annapolis, Md.

BOSTON, MASS., *October 20, 1906.*

SIR: I respectfully submit the following report of the board appointed by you to examine such existing laws relating to the personnel of the Navy as affect the officers of the corps of chaplains in order to ascertain the desirability, in the interests of efficiency and economy, of making any changes in, additions to, or omissions from such laws, having due regard for justice and for the interests of officers of the corps.

Very respectfully, HENRY H. CLARK,
Chaplain, U. S. Navy.

The ASSISTANT SECRETARY OF THE NAVY.

BOSTON, MASS., *October 20, 1906.*

SIR: The board appointed for the purpose of examining such existing laws relating to the personnel of the Navy as affect the corps of chaplains and to determine whether, in the judgment of the board, it would be desirable in the interests of the efficiency and economy to make any changes in, additions to, or omissions from such laws, having due regard for justice and for the interests of officers of the corps, respectfully submit the following report:

1. It is the judgment of the board that the senior member of the corps of chaplains should be given authority, either by act of Congress or determination of the Secretary of the Navy, to advise with the Navy Department and with the chaplains as to the most desirable methods of conducting religious and other forms of beneficent work in the Navy and to urge upon the chaplains the diligent use of such methods; and, furthermore, that he be afforded facilities for acquiring the knowledge of conditions surrounding the work of naval chaplains essential to the thorough performance of such work. It should also be his duty with kindness and solicitude to incite the young chaplains to earnestly cultivate the personal qualities so necessary in winning the confidence and esteem of the officers and men of the service.

2. That the corps of chaplains should be increased to the number of 40, the present grades of lieutenant-commander and lieutenant being readjusted to meet the enlargement of the corps.

3. That each candidate for the office of chaplain should be (as now required by law) a regularly ordained clergyman in the church of which he is a member; that his academic education should have covered no less than four years at some institution or institutions of well-known excellence, or that he should have had the equivalent under competent private tutors; and in addition that he should be a graduate in theology, holding the diploma of a seminary belonging to or approved by his own denomination.

4. That each candidate for the office of chaplain should be selected by superiors in his own church, acting, as the case may be, by episcopal or delegated authority; and that in no instance should an appointment to a chaplaincy be made upon other initiative than that of ecclesiastical selection.

5. That prior to an appointment to fill a vacancy in the corps of chaplains it shall be necessary for the candidate to pass a physical examination before a board of naval surgeons, and to appear before a

board of naval chaplains, consisting of three members, whose duty it shall be to ascertain his educational and professional standing and his right to exercise the functions of the ministry by authority of the church in which he holds membership. It is furthermore desirable that when an appointment to such vacancy is limited to a single denomination, a number of candidates, selected as above indicated, should come before the board of chaplains, that, as in the instance of other staff corps, there may be a number of applicants to choose from. And the choice of a candidate should be ultimately determined by the sharpest scrutiny of his adaptability to the naval service.

6. In the interests of uniformity compendious books of worship should be compiled for Catholic and non-Catholic seamen, including prayers familiar in common liturgical usage, containing also prayers specially prepared for the naval service and hymns accepted by all denominations; and in said books there should be a supplement containing concise, practical instructions and suggestions as to the standards of conduct and character to be maintained in the naval service, the books to bear the imprimatur of the Navy Department; each man in the naval service who may desire it to be furnished with a copy of either book. In the opinion of the board such books would serve a high purpose of religious devotion and moral inspiration and restraint, and we beg leave to suggest that a board of representative chaplains be appointed for the compilation of such books.

7. In the judgment of the board prayers at evening hammocks should be made explicitly uniform in all ships to which chaplains are attached. Apart from the religious significance of this service it has a ceremonial function which, in our opinion, tends strongly to the aid of discipline and good order. It is a custom inherited from the old Navy and appears to us an indispensable bequest.

8. The chaplains should be instructed to use every tactful endeavor to come into personal and sympathetic relations to each member of our ships' crews. They should seek out every case of illiteracy and offer personal service in the way of instruction; they should promote general intelligence among the men, and it should be impressed upon them that their office involves educational and social responsibilities as well as religious. More than any other officer on board ship the chaplain represents to the crew church and school and home. By the two latter his sphere of duty and influence is greatly enlarged. And we beg leave to state that it is our conviction that if there could be instructions to the above effect emanating directly from the Navy Department, such instructions would serve to deeply impress the chaplains with the varied duties and privileges of their office and furnish them an incentive that can spring only from a high source of supervisory direction.

Very respectfully,

HENRY H. CLARK,
Chaplain, U. S. Navy, President of the Board.
FRANK THOMPSON,
Chaplain, U. S. Navy, Member.
MATTHEW C. GLEESON,
Chaplain, U. S. Navy, Member.

The ASSISTANT SECRETARY OF THE NAVY.

NAVY DEPARTMENT,
Washington, D. C., October 13, 1906.

SIR: A board is hereby appointed, consisting of yourself as president, and the following-named officers as members: Prof. of Mathematics Omenzo G. Dodge, U. S. Navy, Prof. of Mathematics Milton Updegraff, U. S. Navy, for the purpose of examining such existing laws relating to the personnel of the Navy as affect the officers of the corps of professors of mathematics and to determine whether, in the judgment of the board, it would be desirable, in the interests of the efficiency and economy, to make any changes in, additions to, or omissions from, such laws, having due regard for justice and for the interests of officers of the corps.

The report of the board, embodying its conclusions, will be made to the Department as soon as practicable, but not later than October 22, 1906. It is the purpose of the Department to refer this report to the Personnel Board, of which Hon. Truman H. Newberry, Assistant Secretary of the Navy, is president, for consideration.

The board will hold itself in readiness to consider and comment upon such portions of the report of the Personnel Board as may be referred to it from time to time by the Department.

The board will hold its sessions at such time and places as the president of the board may designate.

The members of the board have been directed to report by letter to you for this duty.

You are hereby authorized to perform such travel as may be necessary in the proper performance of this duty. Keep a memorandum of the travel so performed, certifying to its necessity, and submit the same to the Department for its approval.

This is addition to your present duties.

Respectfully,

TRUMAN H. NEWBERRY,
Acting Secretary.

Prof. of Mathematics PHILIP R. ALGER, U. S. Navy,
Naval Academy, Annapolis, Md.

UNITED STATES NAVAL ACADEMY,
Annapolis, Md., October 19, 1906.

SIR: (1) The board appointed by your order of October 13, 1906, to examine existing laws relating to the corps of professors of mathematics in the Navy and to determine whether, in the opinion of the board, such laws should be in any way amended, has the honor to report as follows:

(2) The board considered the laws at present governing (*a*) appointments, (*b*) duties, (*c*) numbers and rank, (*d*) pay.

(3) Appointments to the corps of professors are governed by the two following statutes:

SEC. 1400. Professors of mathematics shall be appointed and commissioned by the President of the United States, by and with the advice and consent of the Senate.

SEC. 1556. Hereafter no person shall be appointed professors of mathematics in the Navy until he shall have passed a physical examination before a board of naval surgeons, and a professional examination before a board of professors

of mathematics in the Navy, to be convened for that purpose by the Secretary of the Navy, and received a favorable report from said boards.

In the judgment of the board no change is necessary or desirable in these laws.

(4) The duties to be performed by professors of mathematics are fixed by law, as follows:

SEC. 1401. Professors of mathematics shall perform such duties as may be assigned them by order of the Secretary of the Navy, at the Naval Academy, the Naval Observatory, and on board ships of war, in instructing the midshipmen of the Navy, or otherwise.

SEC. 436. The Secretary of the Navy may place the supervision of the Nautical Almanac in charge of any officer or professor of mathematics in the Navy who is competent for that service. Such officer or professor, when so employed, shall be entitled to receive the shore-duty pay of his grade, and no other.

SEC. 1528. Three professors of mathematics shall be assigned to duty at the Naval Academy, one as professor of ethics and English studies, one as professor of the Spanish language, and one as professor of drawing.

The last-quoted law, Revised Statutes, section 1528, as originally passed (May 21, 1864) was intended to authorize the appointment as professors of mathematics of three individuals who then held at the Naval Academy the professorships named; its incorporation in the Revised Statutes is thought to have been through a misunderstanding of its intent; it has never been fully executed, except on the occasion of its original enactment, and its occasional partial execution has only occurred when it has been invoked for the purpose of securing the appointment to the corps of professors of individuals qualified for the particular professorships named, but for whom the title professor of mathematics was a misnomer. In the judgment of the board the duties of professors of mathematics are sufficiently defined by the first two laws quoted, and Revised Statutes, section 1528, should be repealed.

(5) The number and rank of professors is fixed by the following statutes:

SEC. 1399. The number of professors of mathematics in the Navy shall not exceed twelve.

SEC. 1480. Professors of mathematics shall have relative rank as follows: Three, the relative rank of captain; four, that of commander; and five, that of lieutenant-commander or lieutenant.

Congress has authorized, upon the recommendation of the Secretary of the Navy, an addition of three "extra numbers" to the number of professors of mathematics allowed by law. The equalization of the rank of professors of mathematics with that of officers of equal length of service in the line has been proposed in a letter from Prof. O. G. Dodge, U. S. Navy, to the Navy Department under date of August 30, 1906, but the board is of the opinion that such legislation would not increase the efficiency of the corps of professors. In considering the distribution of rank in the corps of professors it must be remembered that appointees to the corps are supposed to be men of established reputation and consequently of mature years. This has almost invariably been the case and should always be so. The average age on entry to the corps of the professors of mathematics now on the active list was 38 years. In the judgment of the board no changes are necessary or desirable in existing laws relating to the number and rank of professors of mathematics.

(6) The pay of professors of mathematics is fixed as follows:

SEC. 1556. * * * Professors of mathematics * * * during the first five years after date of appointment, when on duty, two thousand four hundred dollars; on leave or waiting orders, one thousand five hundred dollars; during the second five years after such date, when on duty, two thousand seven hundred dollars; on leave or waiting orders, one thousand eight hundred dollars; during the third five years after such date, when on duty, three thousand dollars; on leave or waiting orders, two thousand one hundred dollars; after fifteen years from such date, when on duty, three thousand five hundred dollars; on leave or waiting orders, two thousand six hundred dollars.

These rates of pay have remained unchanged since 1870, though the cost of living has greatly increased since that time and wages and salaries in all classes of employment have increased correspondingly.

At the present time all officers of the Army, Marine Corps, and Revenue-Cutter Service (over 4,000 on the active list), and all officers of the line, Medical, and Pay corps of the Navy (over 1,500 on the active list) receive what is known as "army pay," based upon rank and length of service and independent of corps designation or duty. Only 103 officers (professors, naval constructors, and civil engineers) are deprived of the advantage of the army system of pay. The three senior professors of mathematics, having the rank of captain, receive for pay and allowances slightly less than lieutenant-commanders of the line, Medical, or Pay corps; they receive $1,000 less per annum than professors at the Military Academy of the same rank and performing similar duties. To give the corps of professors "army pay" would require an increased appropriation of about $5,000 per annum for the present (assuming that no professor's pay is reduced), but when the lower grade has been filled by new appointees the total pay of the corps would be practically the same amount as under the present pay table; the range of pay under the present law being from $2,700 to $3,500, and under the proposed law $1,980 to $4,500 when on duty.

In the judgment of the board, therefore, it should be provided, as a matter of justice, that the pay and allowances of the corps of professors be made the same as fixed by law for the line, Medical, and Pay corps.

Very respectfully,

PHILIP R. ALGER,
Professor of Mathematics, U. S. Navy, President of Board.
O. G. DODGE,
Professor of Mathematics, U. S. Navy, Member.
MILTON UPDEGRAFF,
Professor of Mathematics, U. S. Navy Member.

The SECRETARY OF THE NAVY,
Navy Department, Washington, D. C.
(Through the Superintendent, U. S. Naval Academy.)

UNITED STATES NAVAL ACADEMY,
Annapolis, Md., October 22, 1906.

SIR: Referring to my letter of February 9, 1906, submitting, on behalf of the professors of mathematics stationed at the Naval Academy, certain suggestions as to legislation deemed desirable, and to another letter on the same subject dated August 30, 1906.

Inasmuch as the report of a board, dated October 19, 1906, of which Prof. P. R. Alger, U. S. Navy, was president, and of which I was a member, may appear to conflict with the above referred to letters, I wish to offer for the Department's consideration an explanation of the apparent inconsistencies.

I agree in every respect with the view of the board as expressed in its report, which I signed. The following extract from the report refers to the legislation suggested in the letters referred to:

> The equalization of the rank of professors of mathematics with that of officers of equal length of service in the line has been proposed in a letter from Prof. O. G. Dodge, U. S. Navy, to the Navy Department under date of August 30, 1906, but the board is of the opinion that such legislation would not increase the efficiency of the corps of professors.

The legislation as to method of establishing rank, proposed by me, which represented the views of a majority of the professors at the academy as expressed at a meeting held for the purpose of considering it, was not suggested with the idea that it would have any material effect on the proficiency of the corps, but with an entirely different object. It was believed, and justly, I think, that objection would be raised to an equalization of pay with that of other corps inasmuch as the laws governing promotion in the corps often placed a professor ahead of officers of equal length of service in the line of the Navy, which in turn, under "army pay" would give them higher pay than line officers of their date.

The proposed legislation as to rank was suggested with a view to removing objections to an equalization of pay. Its enactment into law would equalize both rank and pay, now and in the future.

Very respectfully,

O. G. DODGE,
Professor of Mathematics, U. S. Navy.

The SECRETARY.

NAVY DEPARTMENT,
Washington, August 31, 1906.

SIR: A board is hereby appointed, consisting of yourself as president, and the following-named officers as members: Naval Constructor William J. Baxter, U. S. Navy; Naval Constructor Richard H. Robinson, U. S. Navy, for the purpose of examining such existing laws relating to the personnel of the Navy as affect the officers of the construction corps, and to determine whether, in the judgment of the board, it would be desirable, in the interests of the efficiency and economy, to make any changes in, additions to, or omissions from such laws, having due regard for justice and for the interests of officers of the corps.

The report of the board, embodying its conclusions, will be made to the Department as soon as practicable, but not later than October 1, 1906. It is the purpose of the Department to refer this report to the Personnel Board, of which Hon. Truman H. Newberry, Assistant Secretary of the Navy, is president, for consideration.

The board will hold itself in readiness to consider and comment upon such portions of the report of the Personnel Board as may be referred to it from time to time by the Department.

The board will hold its sessions at such time and places as the president of the board may designate.

The members of the board have been directed to report by letter to you for this duty.

You are hereby authorized to perform such travel as may be necessary in the proper performance of this duty. Keep a memorandum of the travel so performed, certifying to its necessity, and submit the same to the Department for its approval.

This is in addition to your present duties.

Respectfully,

TRUMAN H. NEWBERRY,
Acting Secretary.

Chief Constructor WASHINGTON L. CAPPS, U. S. Navy,
Chief of the Bureau of Construction and Repair,
Navy Department, Washington, D. C.

DEPARTMENT OF THE NAVY,
BUREAU OF CONSTRUCTION AND REPAIR,
Washington, D. C., October 9, 1906.

SIR: 1. In compliance with instructions contained in the Department's order of August 31, 1906, appointing a board—

"* * * for the purpose of examining such existing laws relating to the personnel of the Navy as affect the officers of the construction corps, to determine whether, in the judgment of the board, it would be desirable, in the interests of efficiency and economy, to make any changes in, additions to, or omissions from such laws, having due regard for justice and for the interests of officers of the corps"—

the board has the honor to submit the following report:

2. Before entering upon any consideration of the conditions as to rank, pay, duty, etc., of members of the construction corps at the present time, the board deems it necessary to review briefly the history of changes in pay, rank, etc., in different branches of the naval service during the past thirty-six years so far as they have direct bearing upon the questions at issue.

3. In 1870 Congress established a revised pay table for all branches of the naval service, and, assuming that the pay then determined upon for the various branches may be considered approximately as a measure of the value of the services of those concerned, special attention is invited to the fact that officers of the construction corps started in with higher rank and higher pay than the lowest grade of officers in any other corps. Furthermore, it appears to have been assumed that the value of the services of highly trained technical officers increased directly with their experience, so that the pay table then established provided that the pay of naval constructors should be increased by substantial increments every five years, until, after twenty years' service as naval constructors, the pay of such officers was higher than that of any other naval officer on shore duty, with the sole exception of rear-admirals, and the pay of these last-named officers, on shore duty, was only $800 per annum greater than the pay of naval constructors of twenty years' service.

4. In 1879 the Navy Department determined to avail itself of statutory provisions which, up to that time, had been practically ignored, and detailed two graduates of the Naval Academy for a special course abroad, with a view to transfer to the construction corps. These offi-

cers were commissioned assistant naval constructors in 1881, and since that time, during a period of twenty-five years, all increases in the construction corps have been by the appointment thereto of graduates of the Naval Academy who had undergone special post-graduate courses of instruction in naval architecture and marine engineering, so that at the present time the corps of naval constructors is composed entirely of graduates of the Naval Academy. The results obtained from this method of recruiting the construction corps have been, on several occasions, the subject of most favorable written comment by Secretaries of the Navy, and the board is of the opinion that the whole naval service recognizes the desirability of recruiting the construction corps by the method inaugurated in 1879.

5. In order that graduates of the Naval Academy of suitable attainments may be induced to enter a corps of this kind, involving, as it does, the definite relinquishment of all opportunity for high command afloat, it is obviously essential that the conditions as to duty, remuneration, etc., should possess definite elements of attraction. Among the attractions previously furnished by the construction corps may be mentioned special opportunities for developing technical and mechanical aptitude for the work of the corps; comparatively rapid promotion, thus permitting the direction of important work to be obtained at a much earlier age than was usually obtained by their colleagues in the line; also better pay during the greater part of their active service. In fact, under the pay tables established in 1870 the total pay received by officers entering the line and the construction corps at the same age would, up to the date of their retirement, be decidedly in favor of the officer of the construction corps. Subsequent to retirement, however, the advantage, even by the pay table of 1870, was entirely in favor of the line officer of high rank who retired at the age of 62.

6. In 1899 the line and engineer corps were consolidated, and the pay of the line, Medical, and Pay corps were assimilated to that of the Army, except that on shore duty naval officers received 15 per cent less pay than Army officers of corresponding rank. The pay of the construction corps, however, remained unchanged. The increase in pay provided for the line, Medical, and Pay corps in 1899 made the disparity in pay received by officers of those branches of the service and the construction corps, during their active careers, very much less than it had been formerly.

7. In 1906 the pay of officers of the line, Medical, and Pay corps, was still further increased by making shore-duty pay the same as sea pay. So that, at the present time, instead of the total pay which would be received while on the active list, by an officer of the construction corps being substantially greater than the total pay which would be received by his classmate who remained in the line, the conditions are exactly reversed. The graduate of the Naval Academy, therefore, who remains in the line will not only be able to look forward to the attractions of high command afloat, but will receive a greater total pay while on the active list; and the line officer will receive, upon retiring at the age of 62, more than 75 per cent greater pay than his classmate who retired at the same time as a naval constructor, with the single exception of the officer who might, by good fortune, retire while holding the position of chief of bureau, and in

that case the retired pay of such officer would, under present law, be about 35 per cent less than his more fortunate colleague in the line.

8. Assuming, therefore, as has been most definitely stated by Secretaries of the Navy, that the method of recruiting the construction corps is decidedly advantageous for the naval service, it seems obvious that the claims of that corps should be given the most careful consideration when proposing legislation which has for its object the betterment of service conditions.

9. It may furthermore be noted that the character of duty in the construction corps is by no means less arduous than that in other branches of the service. On the contrary, the very high death rate among those on the active list, which, during the past twenty-five years, has been more than double that of the line of the Navy, would seem to indicate that unusually arduous work devolves upon officers of that branch of the service. In fact, during the past few months there have been one death and two physical breakdowns among officers of the construction corps which can be directly attributed to overwork, and many other officers of the corps would be very much benefited physically were it possible to grant them temporary leave or relieve them of some of their duties. It is hoped, however, that these conditions will be gradually improved when officers who have recently entered or are now entering the corps have obtained sufficient experience to assume their due proportion of responsibility.

10. Giving due weight, then, to the conditions of service in the construction corps of the Navy, which are fully as arduous, and apparently even more so, judging by the death rate, than those obtaining in other branches of the naval service, special attention is invited to the fact that, up to retirement at the age of 62, the total remuneration which, under present law, will be received by graduates of the Naval Academy specially selected on account of their attainments for transfer to the construction corps will be less than that received by classmates who entered the line of the Navy. Furthermore, upon retirement the annual pay of the naval constructor will be little more than half that of his more fortunate colleague of equal length of service in the line. Since the naval constructor can not look forward to the attractive possibilities of high command afloat, which may reasonably be anticipated by the line officer, it is not surprising that of late there has been a tendency among some officers in the construction corps to regard the marked increase in pay of certain branches of the service, while that of the construction corps remains unchanged, as a reflection upon the importance and value of the services performed by the officers of that corps, and this apparent lack of appreciation is known to have been the deciding factor in some recent cases of resignation in which certain officers resigned from the naval service to accept very much more remunerative positions in civil life.

11. The board fully recognizes, however, not only the difficulty, but even the impracticability of adjusting the pay and emoluments of officers of the naval service in such manner as will permit direct and favorable comparison with the emoluments of officials performing similar work in private life; it also recognizes the difficulties inherent in making even reasonably satisfactory provision for the pay of officers of different branches of the service where the duties performed by such branches are so radically different. The board is, however, firmly of the opinion that when very marked increases in rank, pay,

and promotion have been accorded to the majority of the officers of the Navy the failure to provide some suitable increase in the rank and pay of graduates of the Naval Academy who enter the construction corps tends to create dissatisfaction and possible ultimate inefficiency, since nothing is so demoralizing as the creation of an impression that faithful and earnest work has failed to receive due recognition.

12. After carefully considering the question of pay the board has submitted the definite recommendations which will appear hereafter, and it will be observed that no change whatever has been made in the pay table for members of the construction corps until they have had approximately twenty years' service in the Navy. It will also appear from an inspection of the table proposed that up to approximately a minimum of thirty-five years' service, the maximum pay of officers of the construction corps would not exceed that of a captain in the Navy. After approximately thirty-five years' service one more increment of pay is provided, which will permit officers who have had thirty-five years' service and who remain on the active list to receive pay somewhat approximating that allowed their fellows in the line of corresponding length of service. At retirement, however, a very great disparity will still remain, since the naval constructor would receive on retirement at the age of 62 three-fourths of $5,000 per annum, while his classmate in the line, retiring at the same age, would receive, in all probability, three-fourths of $7,500 per annum.

13. The other material point considered by the board has been that of rank. By the personnel act of 1899 there were authorized 5 naval constructors with the rank of captain and 5 naval constructors with the rank of commander, and the total strength of the corps was limited to 40. Subsequent legislation has increased the total strength of the corps to 75, but up to the present time no change has been made in the number of officers having the rank of captain or commander. The board in its recommendation as to the number of officers to be hereafter commissioned in these grades has adhered to the percentages fixed by the personnel act of 1899, and has made its recommendation as to the number of captains and commanders accordingly.

14. Quite apart, however, from the justice of adhering to the percentages of captains and commanders established by the personnel act of 1899, a casual consideration of the rank of officers serving as heads of departments at navy-yards, superintending constructors, members of boards, etc., will clearly demonstrate that the additional numbers recommended are necessary if it is recognized—as must be the case in a military organization—that rank should bear some adequate relation to the duty performed. At the present time many of the naval constructors who are serving as heads of departments at important navy-yards, shipbuilding yards, and in other capacities are at a serious disadvantage, both as to rank and pay, when compared with officers of other branches of the service acting as heads of departments, inspectors at shipbuilding yards, etc., although the actual labor and material outlay at the majority of our navy-yards and the value of work inspected at shipbuilding yards under the direct cognizance of the Bureau of Construction and Repair is practically equal to that performed under the cognizance of all other Bureaus of the Navy Department combined. The board therefore deems it unnecessary to enter into further argument as to not only the propriety but

the necessity of adhering to the percentage of naval constructors with the rank of captain and naval constructors with the rank of commander, established by the personnel act of 1899.

15. It should be noted in this connection that the board has recommended a minimum length of service before promotion to the grade of captain and commander can be made; so that, except in some rare instance, no officer of the construction corps could receive his promotion to the grade of commander before he was 36 to 40 years of age, depending upon his age at date of entrance to the Naval Academy, and such officer would be at least from 41 to 45 years of age before attaining the rank of captain. These represent, moreover, the most favorable conditions. In the course of a very few years the ages at which command rank will be attained by naval constructors will be considerably greater than those just mentioned, as there will be no retirements of naval constructors on account of age until the year 1918.

16. Although firmly convinced of the desirability of adhering, in the main, to the method of recruiting the construction corps which has proved so satisfactory during the past twenty-five years, the board is of the opinion that some opportunity should be given to those graduates of the Naval Academy and other commissioned officers who, in the course of their naval service, may have developed special aptitude for technical work. The board is therefore of the opinion that the future efficiency of the service and of the construction corps can be increased by making some provision for the transfer to the construction corps of officers below the rank of lieutenant-commander, the exact method of this transfer being clearly set forth in the paragraph which covers proposed legislation on this subject.

17. It will be noted that the present strength of the construction corps has been increased to an extent which will cover the increases by transfer proposed, and in view of the constantly increasing work which will naturally devolve upon the officers of the construction corps with the gradual increase of the Navy, the slight increase recommended is believed to be fully warranted.

18. The board has also given careful consideration to the fact that the technical and administrative work devolving upon the responsible head of a Government bureau having under its immediate direction work the expenditures in connection with which have amounted to more than $20,000,000 per annum in recent years is of such a character as to fully justify that officer's receiving the highest pay of his grade. Should the board's recommendation in this respect meet with the approval of the Department and be subsequently enacted into law, the compensation of the Chief of the Bureau of Construction and Repair in the United States Navy would be only half that received by the director of naval construction of the British navy and only slightly greater than that of four of the assistant directors of naval construction.

19. The board has also been impressed with the advisability of providing that the principal assistants to the Chief of the Bureau of Construction and Repair, as well as the heads of the construction departments at the three principal navy-yards, should receive the highest pay of their grade and has so recommended. The law providing assistants to the chiefs of certain other bureaus of the Navy Depart-

ment also makes provision for such assistants receiving the highest pay of their grade.

20. In giving consideration to any change in the compensation of the chief of the bureau and the heads of the departments at the three principal navy-yards the board has been embarrassed by the fact that some of its members would be directly affected thereby should such legislation be enacted in the immediate future. Being convinced, however, of the importance of disposing of these subjects in a manner which would promote the efficiency of the service, and having due regard to future requirements, the board has attempted to carry out its duty in a manner which will relieve its members of any possible imputation of selfish motives and has therefore made the clause providing such increase in pay inoperative until January 1, 1908, before which date the terms of office of those incumbents who are members of the board will have expired.

21. As will be noted, the board has recommended the application to officers of the Navy of certain statutes which now affect only the Army. Since all of these have been found necessary and desirable for the Army, the board deems it unnecessary to enter into any special argument in support of statutes which have been found necessary or advisable for the sister service. It is believed, moreover, that the Army statutes relating to retirement, herein recommended for application to the Navy, are especially worthy of consideration, the statute with respect to retirement after thirty years' service having been very recently recommended to the favorable consideration of Congress by the Secretary of the Navy in a communication dated January 5, 1905.

22. In considering present and proposed laws with respect to the personnel of the construction corps of the Navy, the board has made every effort to keep in mind their bearing not only upon the construction corps, but upon the service at large, and submits the following definite recommendations in the belief that they are based upon principles of justice and the efficiency of the service as a whole and with the sincere hope that they will meet with favorable consideration, not only by the Department and the Special Board on Personnel, but by Congress.

23. The report of the board has been delayed by authority of the Acting Secretary of the Navy on account of the unavoidable and unexpected departure from Washington of the president of the board the day prior to that fixed upon for the final meeting of the board.

24. The specific recommendations are as follows:

That of the naval constructors, one shall be Chief of the Bureau of Construction and Repair, and while so serving shall have the rank of rear-admiral; eight shall have the rank of captain, ten the rank of commander, and all others the rank of lieutenant-commander or lieutenant, as now provided by law: *Provided*, That no officer shall be promoted to the rank of commander until he has had twenty years' service in the Navy, nor to the rank of captain until he has had twenty-five years' service: *Provided further*, That assistant naval constructors shall have the rank of lieutenant or lieutenant (junior grade), and shall be appointed from graduates of the Naval Academy in the manner now in force under the provisions of existing law: *And provided further*, That any commissioned officer of the Navy below the rank of lieutenant-commander may, with the approval of the Secretary of the Navy and upon the recommendation of the Chief Constructor, be assigned to temporary duty with the corps of naval constructors, with a view to ultimate permanent transfer thereto after the expiration of two years' temporary service and after passing a suitable examination before a board composed of three naval

constructors, said permanent appointment in the construction corps to be made by the President by and with the advice and consent of the Senate, in the same manner as now provided by law for all other commissioned officers of the Navy. While serving temporarily with the corps of naval constructors, and after permanent appointment therein, such officers will have the same rank and receive the same pay and allowances as officers of that corps having the same date of precedence and will be regarded as additional numbers in the grades to which assigned: *Provided further*, That not more than three officers shall be so assigned or appointed in any one year, and that the total number of officers so assigned and appointed shall not exceed fifteen, and the total number of officers in the construction corps shall not exceed ninety: *Provided further*, That no officer shall receive the pay of the grade of naval constructor who has not had fourteen years' service in the Navy, including the five years' constructive service now authorized by law for such officers as have been appointed to the Navy from civil life.

That section 1556 of the Revised Statutes, so far as it pertains to the pay of naval constructors, shall be modified to read as follows:

Naval constructors and assistant naval constructors shall be entitled to receive annual pay at the rates hereinafter stated after their respective designations: Naval constructors, during the first five years after date of appointment, three thousand two hundred dollars; during the second five years after said date, three thousand seven hundred dollars: during the third five years after said date, four thousand two hundred dollars; during the fourth five years after said date, four thousand five hundred dollars; after twenty years from said date, five thousand dollars. Assistant naval constructors, during the first four years after date of appointment, two thousand dollars; during the second four years after said date, two thousand two hundred dollars; after eight years from said date, two thousand six hundred dollars: *Provided*, That all officers of the corps of naval constructors shall receive the same allowances, except forage, as are or may be provided by or in pursuance of law for the officers of corresponding rank in the Army: *Provided further*, That after January first, nineteen hundred and eight, the Chief of the Bureau of Construction and Repair, and such officers as may be designated by competent authority to act for said official during his authorized absence, also the heads of departments of construction and repair at the three principal navy-yards, as determined by the Secretary of the Navy, shall receive the highest pay of their rank or grade.

The board further recommends that the provisions of the following statutes, now applicable to officers of the Army, be hereafter made applicable to officers of the Navy:

SEC. 1243, Revised Statutes (Act July 15, 1870). When an officer has served forty consecutive years as a commissioned officer, he shall, if he makes application therefor to the President, be retired from active service and placed upon the retired list. When an officer has been thirty years in service, he may, upon his own application, in the discretion of the President, be so retired, and placed on the retired list.

SEC. 1265, Revised Statutes. Officers when absent on account of sickness or wounds or lawfully absent from duty and waiting orders shall receive full pay; when absent with leave, for other causes, full pay during such absence not exceeding in the aggregate thirty days in one year, and half pay during such absence exceeding thirty days in one year. When absent without leave they shall forfeit all pay during such absence, unless the absence is excused as unavoidable.

The act of July 29, 1876 (19 Stat. L., 102), amending the above-noted section, as follows:

Be it enacted, etc., That an (1) act approved May eighth, eighteen hundred and seventy-four, in regard to leave of absence of army officers, be, and the same is hereby, so amended that all officers on duty shall be allowed, in the discretion of the Secretary of War, sixty days' leave of absence without deduction of pay or allowance: *Provided*, That the same be taken once in two years: *And provided further*, That the leave of absence may be extended to three months, if taken once only in three years, or four months if taken once only in four years.

Extract from section 26 of "An act to increase the efficiency of the permanent military establishment of the United States," approved February 2, 1901, as follows:

* * * Any officer now holding office in any corps or department who shall hereafter serve as chief of a staff corps or department and shall subsequently be retired, shall be retired with the rank, pay, and allowances authorized by law for retirement of such corps or department chief.

The expressions "corps or department" and "chief of a staff corps or department," to be changed to "corps," "bureau," and "chief of bureau," to conform to the requirements of existing statutes relating to the organization of the Navy Department.

That the uniform practice of the Army with respect to the official designation of officers of all branches of that service be extended, in like manner, to officers of the naval service, thus giving full effect to the last clause of section 1212, Revised Statutes, relating to the Army, which reads as follows:

SEC. 1212. * * * and no officer shall be addressed in orders or official communications by any title other than that of his actual rank.

Very respectfully,

W. L. CAPPS,
Chief Constructor, U. S. Navy, President of Board.
WM. J. BAXTER,
Naval Constructor, U. S. Navy, Member.
R. H. ROBINSON,
Naval Constructor, U. S. Navy, Member.

The SECRETARY OF THE NAVY.

NAVY DEPARTMENT,
Washington, August 31, 1906.

SIR: A board is hereby appointed, consisting of yourself as president and the following-named officers as members: Civil Engineer Andrew C. Cunningham, U. S. Navy; Civil Engineer Archibald L. Parsons, U. S. Navy, for the purpose of examining such existing laws relating to the personnel of the Navy as affect the officers of the civil engineer corps, and to determine whether, in the judgment of the board, it would be desirable, in the interests of efficiency and economy, to make any changes in, additions to, or omissions from such laws, having due regard for justice, and for the interests of officers of the corps.

The report of the board, embodying its conclusions, will be made to the Department, as soon as practicable, and not later than October 1, 1906. It is the purpose of the Department to refer this report to the Personnel Board, of which Hon. Truman H. Newberry, Assistant Secretary of the Navy, is president, for consideration.

The board will hold itself in readiness to consider and comment upon such portions of the report of the Personnel Board as may be referred to it from time to time by the Department.

The board will hold its sessions at such time and places as the president of the board may designate.

The members of the board have been directed to report to you for this duty.

You are hereby authorized to perform such travel as may be necessary in the proper performance of this duty. Keep a memorandum of the travel so performed, certifying to its necessity, and submit the same to the Department for its approval.

This is in addition to your present duties.

Respectfully,

TRUMAN H. NEWBERRY,
Acting Secretary.

Civil Engineer MORDECAI T. ENDICOTT, U. S. Navy,
Chief of the Bureau of Yards and Docks,
Navy Department, Washington, D. C.

DEPARTMENT OF THE NAVY,
BUREAU OF YARDS AND DOCKS,
Washington, D. C., October 1, 1906.

SIR: In accordance with the directions contained in your letter of August 31, 1906, the board thereby appointed has examined such existing laws relating to the personnel of the Navy as affect the officers of the civil engineer corps, to determine whether, in the judgment of the board, it would be desirable, in the interests of efficiency and economy, to make any changes in, additions to, or omissions from such laws, having due regard for justice and for the interests of the officers of the corps, and respectfully reports as follows:

2. Existing laws affect the civil engineer corps as follows:

The corps, as authorized, consists of 28 members of full grade and 12 assistants. The 28 members of full grade have such rank as the President may fix. The rank of the assistants is fixed by law, so that the first 6 have the rank of lieutenant, junior grade, and the last 6 have the rank of ensign. The pay of civil engineers is arranged on a longevity basis and was fixed in 1870 before civil engineers were given rank; the duty pay begins with $2,400 per annum and in the course of fifteen years increases to $3,500 per annum; when on leave or waiting orders the duty pay is decreased by $900 per annum. The pay of assistant civil engineers is arranged on a longevity basis and was fixed in 1903 when this grade was created, and was necessarily placed below that of civil engineers of full grade. The duty pay of assistants begins with $1,500 per annum and increases in the course of ten years to $2,100 per annum. When on leave or waiting orders the duty pay is decreased from $500 to $700 per annum. When assistants are appointed from civil life they are allowed five years' constructive service, which begins their pay with $1,800 per annum. When they pass to the full grade their pay begins with $2,400 per annum, the five years' constructive service allowed to civil engineers of full grade who were appointed before the creation of the assistant grade and after the establishment of that provision not being counted a second time. Within the year commutation of quarters has been provided for civil engineers and assistant civil engineers. The law does not define the requirements for appointment to the grade of assistant civil engineer, but does define the requirements for promotion to the grade of civil engineer. Within the year it has also been provided that the Chief of the Bureau of Yards and Docks shall be a civil engineer having had *not* less than seven years' active service.

3. As regard the total number of members in the civil engineer corps, 40 in all, the board is of the opinion that this number is sufficient for present needs, though more could be used to advantage. Attention is especially invited to the fact that in times of war and emergency, when line officers are most needed for military duty, there is much work in the navy-yard departments and in the way of inspection and other not purely military duty that could be temporarily delegated to the civil engineer corps, if of sufficient numbers, until the emergency had ceased. Such work outside their ordinary duties has already been performed by civil engineers on new stations and in the insular possessions, where there was a shortage of other officers.

4. The existing rank of the civil engineer corps is badly out of adjustment as the result of the increase of this corps from 12 to 40 members in a period of nine years. This increase in numbers without readjustment of rank was possible on account of the pay of the civil engineer being on a longevity basis and independent of rank, but it has been the hope of the corps during this period that its distribution of rank would be more equitably arranged in relation to other corps of Navy. When the corps was first given rank it consisted of 10 members, and the distribution was 1 captain, 2 commanders, 3 lieutenant-commanders, and 4 lieutenants. The number of captains has since been increased to 2, and the lieutenant-commanders reduced to 2, all other members that were added having been given the rank of lieutenant, junior grade, until there were 18 with this rank. When the grade of assistant civil engineer was provided, the first 6 in that grade brought the number that would have had the rank of lieutenant, junior grade, up to 24. This condition has been somewhat relieved in the past few months by providing that the civil engineers below the rank of lieutenant commander should take rank with the line officer who determined their precedence, and in consequence the 18 civil engineers who formerly had the rank of lieutenant, junior grade, now have the rank of senior lieutenant. The distribution of rank in the civil engineer corps should depend upon whether it is to be simply considered in relation to the rank in other corps of the Navy, or in relation to rank as also governing pay, and will be further discussed in succeeding paragraphs as a closer connection is reached.

5. The pay of civil engineers was fixed thirty-six years ago when the corps was small and without rank, and its duties comparatively unimportant as viewed from a modern standpoint. The greatest activity and importance of this corps has begun since the Spanish war and its increase to four times its original number has been made from graduates in civil engineering who have been required to pass a stringent competitive examination. In the grade of assistant, two midshipmen who have completed the course at the Naval Academy have been secured and are now taking a course in civil engineering to especially fit them for their work. The board is of the opinion that the sooner it is arranged to entirely recruit the corps from graduates of the Naval Academy the better it will be for the interests of the Navy. The importance and magnitude of the work which is now performed by the civil engineer corps, and will be from this time forward, has placed it relatively in the same position in the Navy as the corps of naval constructors, and it is the opinion of the board that it is to the best interests of the Navy at the present time, and more particularly for the future, to place the civil engineer corps on

the same basis as regards pay, rank, and advancement as the corps of naval constructors.

In considering the case of the last appointee to the grade of assistant civil engineer, who was a midshipman, it is estimated that his yearly average pay for a full term of service, or until the age of 62 years, on the present basis of pay, will be about $2,743. The yearly average pay of a line officer entering the service under similar conditions and for the same term is estimated at about $3,565, and for a naval constructor the estimate is about $3,528. For a further allowance of a probable fifteen years on the retired list, the civil engineer's yearly average pay, active and retired, decreases to $2,710. With the same retirement term the line officer's yearly average pay will increase to about $4,126, and the naval constructor's pay will decrease to about $3,424. The case considered will not differ materially from the average for the entire civil engineer corps, present or future, and it is apparent that the civil engineer's pay conditions are much more unfavorable than those of the line, and that in recommending the same pay for the civil engineer corps as is provided for the corps of naval constructors an average pay less than that of the line is provided. In a general way there has been a desire on the part of Congress to place all corps of the Navy on army pay table for the sake of uniformity. To place the civil engineers on army pay and insure them the average pay of the line while on the active list would necessitate giving all the assistant civil engineers the rank of lieutenant, senior grade, and passing them to full grade after eight years with rank increased to lieutenant commander; after ten years in the full grade the rank would have to be that of commander, and after twenty years the rank would have to be that of captain. With the present corps, which has been rapidly formed and contains a large number of men whose ages do not greatly differ, such conditions would ultimately result in the most of the present corps having the rank of captain and commander, a condition which is not considered for the best interests of the corps and which it is not believed would be acceptable to the balance of the service.

6. The civil engineer corps does not have the benefit of forced or voluntary retirement or of the grade of rear-admiral, and thus can not have the flow of rank that is provided for the line; in consequence any attempt to place it on army pay and insure to it the benefits of the same that are enjoyed by the line of the Navy would result in conditions that would be as different from those governing the line as are the present ones. From a careful study of the matter the board has arrived at the conclusion that the conditions governing the corps of naval constructors have been reached as the most just and equitable solution for a technical staff corps of this nature. They have been provided with rank and advancement of rank, which for a certain time keeps them equal with the line, but which must ultimately fall behind. Their pay during active service, however, is so fixed and arranged as to nearly average with that of the line while they are gradually and ultimately falling behind in rank.

7. For several years past the corps of civil engineers has hoped for a readjustment of rank and the same pay that is given the corps of naval constructors. Failure to secure any favorable action is believed

to have been the cause of the resignation of two valuable members, at least one of whom had acquired experience of especial value to the Navy. Whatever unsettled feeling may exist among the civil engineers of full grade, however, is less serious than the conditions relating to the grade of assistant civil engineers. There are eight vacancies in that grade, and under existing conditions those who might fill them would pass a large portion of their active service in the assistant grade on a low rate of pay and would not even attain the present maximum pay of a civil engineer, $3,500, until late in life. These conditions have become so well known among civil engineers in civil life that repeated examinations have failed to secure candidates of sufficient ability to pass the standard requirements for the position. The board is of the opinion that it would be a serious detriment to the Navy to lower the entrance standard for the sake of filling these vacancies, and is further of the opinion that the improvement of existing conditions will at once attract desirable candidates for the corps.

8. For the improvement of the civil engineer corps, and for the best interest of the Navy, the board is of the opinion that the following changes should be made:

(*a*) Civil engineers and assistant civil engineers should receive the same pay and allowances as naval constructors and assistant naval constructors.

(*b*) As all officers in the Navy now receive commutation for quarters, the allowances of the Army should be made a matter of general legislation applicable to all naval officers instead of having a portion included each year in a special item of the naval appropriation bill.

(*c*) Assistant civil engineers should be passed to the grade of civil engineer after eight years' service, if not sooner promoted through vacancy in the upper grade.

(*d*) Vacancies in the grade of assistant civil engineer should be filled by competitive examination of civil engineers from civil life, or by appointment of graduates of the Naval Academy, who should be given a special course in civil engineering to fit them for their duties.

(*e*) A civil engineer should be detailed as an assistant chief of the Bureau of Yards and Docks, in order that the Bureau may always have a technical officer to assume the responsibility for matters which are now at times thrown upon the nontechnical chief clerk of the Bureau.

(*f*) In case it is considered absolutely necessary to place all corps of the Navy on army pay, the civil engineer corps should receive such distribution of rank, with provision for advancement, as will insure its members the average pay of line officers during active service.

(*g*) Should the pay of the corps of naval constructors be recommended for the civil engineer corps, it is considered that rank should be distributed as follows: The first five civil engineers to have the rank of captain; the second five civil engineers to have the rank of commander; the remainder of the civil engineers and assistant civil engineers to take rank with the line officers who determine their precedence, up to and including the rank of lieutenant commander.

(*h*) The pay and allowances of the civil engineer corps should not be reduced for the ordinary thirty days' leave that is allowed to officers during a calender year when their services can be spared. The

law provides that in the Army an officer may accumulate his annual leave of one month for a period of not exceeding four years, and it is believed that this practice should be extended to the officers of the Navy.

(*i*) The titles of civil engineers and assistant civil engineers should be their rank, after the manner established by law for staff officers in the Army.

(*j*) In view of the importance of the duties performed by chiefs of bureaus in the Navy Department, they should receive the pay of a major-general in the Army instead of the pay of a brigadier-general.

(*k*) Officers of the Army are allowed to retire after thirty years' service, in the discretion of the President. It is believed that this provision should also be extended to officers of the Navy, and, further, that where officers are retired for disability incurred in the line of duty it would be no more than just to retire them with the rank and pay of the next higher grade.

9. The changes considered placed in the form of a statute would be as follows, in case the civil engineer corps is placed on army pay:

Civil engineers and assistant civil engineers shall hereafter receive the same pay and allowances as are or may be provided by law for officers of corresponding rank in the Army. The civil engineering corps shall consist of forty members, not less than twenty-eight of whom shall be civil engineers of full grade, the balance to be assistant civil engineers until promoted through vacancy to the full grade of civil engineer, or after eight years' service in the grade of assistant civil engineer, promotion from assistant to full grade to be upon such examination as the Secretary of the Navy may prescribe. Vacancies in the grade of assistant civil engineer shall be filled by appointment of civil engineers from civil life under such requirements and after such examination as the Secretary of the Navy may prescribe, or by appointment from graduates of the Naval Academy, who shall be given such course in civil engineering as the Secretary of the Navy may prescribe. Assistant civil engineers shall have the rank of lieutenant, senior grade. During the first ten years in the full grade civil engineers shall have the rank of lieutenant-commander; during the second ten years in the full grade civil engineers shall have the rank of commander; after twenty years in the full grade civil engineers shall have the rank of captain. A civil engineer may be detailed as assistant to the Chief of the Bureau of Yards and Docks, and during such detail shall receive the highest pay of a civil engineer, and in case of the death, resignation, absence, or sickness of the Chief of Bureau, shall, unless otherwise directed by the President, as provided by section one hundred and seventy-nine of the Revised Statutes, perform the duties of such Chief until his successor is appointed or such absence or sickness shall cease. Nothing herein contained shall operate to reduce the pay and allowances which any civil engineer or assistant civil engineer now in the service would otherwise have received. Civil engineers and assistant civil engineers shall not be addressed in official communications by any other title than that of their actual rank, the same as provided for officers of the Army in section twelve hundred and twelve of the Revised Statutes. The pay and allowances of the Chief of the Bureau of Yards and Docks shall be the same as are or may be provided by law for major-generals in the Army. When a civil engineer has been thirty years in active service, he may, upon his own application, in the discretion of the President, be retired from active service and placed upon the retired list, and when a civil engineer or assistant civil engineer shall be retired for disability incurred in the line of duty he shall be retired with the next higher rank and three-fourths of the next higher pay to that received by him previous to retirement. The thirty days' leave of absence which may be granted to officers in any one calendar year may be extended to sixty days if taken only once in two years, to ninety days if taken only once in three years, or to one hundred and twenty days if taken only once in four years.

10. The changes considered placed in the form of an enactment would be as follows, in case the civil engineer corps is placed on the same pay as the corps of naval constructors:

The civil engineer corps shall consist of forty members, not less than twenty-eight of whom shall be civil engineers of full grade, the balance to be assistant civil engineers until promoted through vacancy to the full grade of civil engineer, or after eight years' service in the grade of assistant civil engineer, promotion from assistant to full grade to be upon such examination as the Secretary of the Navy may prescribe. Vacancies in the grade of assistant civil engineer shall be filled by appointment of civil engineers from civil life under such requirements and after such examination as the Secretary of the Navy may prescribe, or by appointment from graduates of the Naval Academy, who shall be given such course in civil engineering as the Secretary of the Navy may prescribe. The pay and allowances of civil engineers and assistant civil engineers shall be the same as are or may be provided by law for naval constructors and assistant naval constructors. The first five civil engineers shall have the rank of captain, the second five civil engineers shall have the rank of commander, and the remainder of the civil engineers and assistant civil engineers shall take rank with the line officer with whom they take precedence, up to and including but not beyond the rank of lieutenant-commander.

A civil engineer may be detailed as assistant to the Chief of the Bureau of Yards and Docks, and during such detail shall receive the highest pay of a civil engineer, and in case of the death, resignation, absence, or sickness of the Chief of the Bureau, shall, unless otherwise directed by the President, as provided by section one hundred and seventy-nine of the Revised Statutes, perform the duties of such Chief until his successor is appointed or such absence or sickness shall cease. The thirty days' leave of absence which may be granted to officers in any one calendar year may be extended to sixty days if taken only once in two years, to ninety days if taken only once in three years, or to one hundred and twenty days if taken only once in four years, and the duty pay and allowances of civil engineers and assistant civil engineers shall not be reduced on account of such allowable leave. Nothing herein contained shall operate to reduce the pay and allowances which any civil engineer or assistant civil engineer now in the service would otherwise have received. Civil engineers and assistant civil engineers shall not be addressed in official communications by any other title than that of their actual rank, the same as provided for officers of the Army in section twelve hundred and twelve of the Revised Statutes. The pay and allowances of the Chief of the Bureau of Yards and Docks shall be the same as are or may be provided by law for major-generals in the Army. When a civil engineer has been thirty years in active service, he may, upon his own application, in the discretion of the President, be retired from active service and placed upon the retired list, and when a civil engineer or assistant civil engineer shall be retired for disability incurred in the line of duty he shall be retired with the next higher rank and three-fourths of the next higher pay to that received by him previous to retirement.

11. The board recommends, as a first choice, the changes and additions provided for in paragraph No. 10, and, as a second choice, those provided for in paragraph No. 9.

Very respectfully,

MORDECAI T. ENDICOTT,
Civil Engineer, U. S. Navy, Chief, Bureau Yards and Docks, President of Board.

A. C. CUNNINGHAM,
Civil Engineer, U. S. Navy, Member of Board.

A. L. PARSONS,
Civil Engineer, U. S. Navy, Member of Board.

The SECRETARY OF THE NAVY.

NAVY DEPARTMENT,
Washington, August 31, 1906.

SIR: A board is hereby appointed, consisting of yourself as president and of the following-named officers as members: Col. Charles H. Lauchheimer, U. S. Marine Corps, and Lieut. Col. James E. Mahoney, U. S. Marine Corps, for the purpose of examining such existing laws relating to the personnel of the Navy as affect the officers of the United States Marine Corps, and to determine whether, in the judgment of the board, it would be desirable, in the interest of efficiency and economy, to make any changes in, additions to, or omissions from such laws, having due regard for justice and for the interests of officers of the corps.

The report of the board, embodying its conclusions, will be made to the Department as soon as practicable, but not later than October 1, 1906. It is the purpose of the Department to refer this report to the Personnel Board, of which Hon. Truman H. Newberry, Assistant Secretary of the Navy, is president, for consideration.

The board will hold itself in readiness to consider and comment upon such portions of the report of the Personnel Board as may be referred to it from time to time by the Department.

The board will hold its sessions at such time and places as the president of the board may designate.

The members of the board have been directed to report by letter to you for this duty.

You are hereby authorized to perform such travel as may be necessary in the proper performance of this duty. Keep a memorandum of the travel so performed, certifying to its necessity, and submit the same to the Department for its approval.

This is in addition to your present duties.

Respectfully,

TRUMAN H. NEWBERRY,
Acting Secretary.

Brig. Gen. GEORGE F. ELLIOTT, U. S. Marine Corps,
Commandant U. S. Marine Corps, Washington, D. C.

HEADQUARTERS U. S. MARINE CORPS,
Washington, D. C., September 24, 1906.

SIR: Referring to the Department's communication of the 31st ultimo, convening a board for the purpose of examining such existing laws relating to the personnel of the Navy as affect the officers of the Marine Corps and to determine whether, in the judgment of the board, it will be desirable in the interests of the efficiency and economy of the corps to make any changes in, additions to, or any omissions from such laws, having due regard for justice and for the interests of the officers of the corps, the following report on the subject is respectfully submitted:

2. The board has carefully considered the laws now on the statute books which pertain to the status of the officers of the Marine Corps for the purpose of determining whether any changes should be recommended therein so far as they refer specifically to the number of officers allowed in the various grades. The board has also given atten-

tion to the subject of how to provide by legislation for a healthy flow of promotion in the various grades, which is deemed essential to the efficiency of a military organization.

3. An examination of the register of the Marine Corps discloses the fact that the number of officers now allowed in the various grades is far below that required, not only for the near future, but even for the immediate necessities of the service.

4. It is believed that, with a few exceptions in the lower grades, the ages of the officers of the corps in their respective grades are now and will continue for a period of about twelve years to be practically what they should be to produce efficient results, provided that in the interim provision is made for a fairly healthy flow of promotion by gradually increasing the number of officers in the higher grades and by the promotion of second lieutenants after three years' service. The board therefore does not deem it necessary to recommend at this time, in order to promote the efficiency of the corps, any radical scheme, such as retirement by selection.

5. The board in its deliberations has considered, first, the increase in the various grades which are believed to be imperatively necessary at the present time, and, second, those which will be required in the near future. This question of the number of officers necessary for the proper performance of duty was more or less recently considered and reported upon by the Brigadier-General Commandant in response to a communication from the Department under date of May 20, 1905, directing that estimates be submitted for the support of the corps yearly, up to 1912, when it is believed the present building programme of the Navy will have been completed.

6. In considering the question of the number of officers required in a military organization such as the Marine Corps, regard must be had to the number of the enlisted personnel, and this the board has done. The number of enlisted men now authorized by law is 8,771, and the Commandant of the Marine Corps, in the estimate to be submitted to Congress this year, has requested an additional 2,000 men, which, in his opinion, are absolutely necessary to meet present requirements, and in this the board strongly concurs. This prospective increase has previously met with the Department's approval, and the Secretary, in his annual report last year, recommended the enactment of appropriate legislation looking to an increase in the enlisted personnel of the corps, and it is believed that he will again approve thereof this year. The board has therefore considered the number of officers of the corps necessary in order to properly officer these 10,771 men, and in doing this it has kept in mind the duties to be performed both at sea and on shore, and as a result of its deliberation has to recommend, so far as the line of the corps is concerned, that the present number of commissioned officers be immediately increased by 1 major-general, commandant; 3 brigadiers-general, 1 lieutenant-colonel, 5 majors, 40 captains, and 30 first lieutenants. The vacancies created in the list of second lieutenants to be filled by the appointment of 40 at once and 40 during the next year. For the staff departments, the following recommendations, which were made in the Commandant's report for the past year, are adopted by the board: Adjutant and inspector's department, 1 lieutenant-colonel; quartermaster's depart-

ment, 1 lieutenant-colonel, 1 major, 4 captains; pay department, 1 major and 3 captains.

7. In the memorandum submitted to the Department in obedience to its instructions of May 20, 1905, the Commandant of the Corps pointed out the fact that the requirements of the naval service in 1912 would demand an enlisted strength of the Marine Corps of about 14,700 men, with the following officers of the line: One major-general, commandant; 3 brigadiers-general, 9 colonels, 9 lieutenant-colonels, 22 majors, 138 captains, 126 first and 160 second lieutenants. While the board agrees in the main with the above, it believes, however, that when the corps has attained the enlisted strength above referred to (14,700), the number of officers of the various grades of the line should be as follows: One major-general, commandant; 3 brigadiers-general, 9 colonels, 9 lieutenant-colonels, 30 majors, 180 captains, 180 first lieutenants, and 144 second lieutenants.

8. This number of line officers would simply give to the corps a sufficient quota to fulfill the requirements of the corps, not only as a military organization, but also to fulfill the varied conditions of service imposed upon it by being detached for service with the Navy. The increases over those above referred to in paragraph 6 of this report, which increase it is recommended should be made at once, it is advised be apportioned during the next five years, and if this be done, it is believed that there will be a more or less healthy flow of promotion from the lower to the higher grades, and thus, in a measure, check the stagnation, which, from present indications, will reach the critical point in about twelve years.

9. So far as pertains to the staff departments of the corps, the board is of the opinion that when the line has been reorganized as outlined in the preceding paragraph to meet the requirements of 14,700 enlisted men, the staff departments should be composed as follows:

Adjutant and inspector's department.—One adjutant and inspector-general, with the rank of brigadier-general; 1 assistant adjutant and inspector-general, with the rank of colonel; 2 deputy adjutants and inspectors-general, with the rank of lieutenant-colonel; 5 adjutants and inspectors, with the rank of major.

Quartermaster's department.—One quartermaster-general, with the rank of brigadier-general; 2 assistant quartermasters-general, with the rank of colonel; 2 deputy quartermasters-general, with the rank of lieutenant-colonel; 4 quartermasters, with the rank of major; 16 quartermasters, with the rank of captain.

Paymaster's department.—One paymaster-general, with the rank of brigadier-general; 1 assistant paymaster-general, with the rank of colonel; 2 deputy paymasters-general, with the rank of lieutenant-colonel; 2 paymasters, with the rank of major; 4 paymasters, with the rank of captain.

The increase in the staff departments beyond those outlined in paragraph 6 of this report to be appointed during the next five years as outlined for the officers of the line. It is recommended, however, that when the enlisted strength of the corps has reached 12,000 men, the heads of the three staff departments be at once made brigadiers-general.

10. The increases in the various grades of both line and staff to be made contemporaneously with the increase of the enlisted personnel so that there be officers of the proper grade for such increases, and in

this connection the board records it as its opinion that the enlisted personnel should be increased 2,000 at once, 2,000 the next year, and 800, respectively, for the three succeeding years.

11. The board, after careful consideration, has not deemed it necessary, as above stated, to recommend any radical scheme of retirement by selection, for, as stated in the fourth paragraph of this report, the officers now, and for about twelve years to come, will be of serviceable ages for the grades occupied by them, and a gradual increase in the corps for the next five years will produce all the results which it will be necessary to accomplish.

12. It is believed, in view of the fact that second lieutenants when at sea live in the junior officers' mess, and as their promotion will be slow, while the present promotion in the junior grades of both line and staff is rapid, that officers of the Marine Corps will be compelled to mess and live with officers who entered the service many years subsequent to the time they entered and with men much their junior in years. The present tendency of giving officers of the lowest grades in the Navy, both line and staff, promotion after three years' service is believed to be a good one; and as officers of the Marine Corps of the grades of first and second lieutenants perform exactly the same duties, it is recommended that second lieutenants, after three years' service as such, be promoted to first lieutenants; this to be done without increasing the actual number of lieutenants provided for by law, and if done would involve but little expense, as the pay of a first lieutenant is but $100 per annum more than that of a second lieutenant.

13. In view of the fact that it is believed the Naval Academy will shortly be able to graduate sufficient midshipmen to supply the Marine Corps with the number of officers necessary to fill the vacancies existing in the lower grades, it is recommended that the present requirements of the law be made mandatory so as to make it the positive duty of the Department to appoint each year a sufficient number of properly qualified officers from the graduates of the Naval Academy to fill the vacancies which have occurred in the corps during the preceding year, provided that a certain small percentage of the vacancies which occur during the year be filled by the President from meritorious noncommissioned officers.

14. It is the opinion of the board that appointments from civil life should be discontinued at the earliest practicable date; but if it be impossible to fill all the vacancies from the graduates of the Naval Academy and meritorious noncommissioned officers of the corps, and recourse must be had to civil life, the board recommends that the maximum age limit be reduced from 27 to 24 years. This is believed necessary to prevent the officers who are retained in the lower grades reaching an age in such grades as to outlive their usefulness for effective service.

15. In view of the recent opinions of the Attorney-General with regard to the relative rank and precedence of officers of the Marine Corps with the line and staff of the Navy, and in order that there may be no question as to the rank of said officers when serving on courts and boards, it is recommended that the law be amended so that all officers, both of the Navy and Marine Corps, take rank the one with the other in the various grades in accordance with the date of their respective commissions. It is recommended that section 1486, Revised Statutes, be abrogated and the precedence table abolished.

16. The law now on the statute books relating to the promotion of officers of the Marine Corps provides that an officer who is found by the examining board to be morally disqualified for promotion is to be suspended from promotion for one year, in the same manner as an officer who is found to be professionally disqualified. The board is of the opinion that an officer who is found to be morally disqualified should be wholly retired from the service, as is done in the case of officers of the Navy under the provisions of the act approved August 5, 1882, and recommends that this feature be made applicable to the Marine Corps.

17. The procedure now followed by examining boards permits an officer who since his last promotion has committed himself in a moral way, and probably would not be recommended for promotion, to be first examined physically and, if found disqualified, promoted to the next higher grade. It is believed that if the moral examination of the candidate would precede the physical examination, some officers who might now be permitted to be retired with the next higher grade would be found morally disqualified and wholly retired. It is therefore recommended that the moral examination of officers for promotion precede the physical examination.

18. It is recommended that field officers before being promoted to the next higher grade be subjected to a mental, moral, physical, and professional examination, as is now required for other officers of the corps.

19. It is also recommended that the present law be so modified as to permit captains of the line to be eligible for appointment to staff commissions of equal grade.

20. The board believes that the subject of pay, especially for officers of the lower grades, is one entitled to serious consideration, as the present pay table was adopted at a time when the cost of living was materially less than at the present time.

Very respectfully,

G. F. ELLIOTT,
Brigadier-General Commandant.
C. H. LAUCHHEIMER,
Colonel, Adjutant and Inspector.
J. E. MAHONEY,
Lieutenant-Colonel, U. S. Marine Corps.

Hon. TRUMAN H. NEWBERRY,
Assistant Secretary of the Navy,
President of the Board, Washington, D. C.

HEADQUARTERS, U. S. MARINE CORPS,
Washington, D. C., October 8, 1906.

SIR: I have the honor to inclose herewith a memorandum by the paymaster of the Marine Corps made in accordance with the instructions contained in the memorandum of October 5, 1906, by the Acting Secretary of the Navy.

Very respectfully,

G. F. ELLIOTT,
Brigadier-General Commandant.

Hon. TRUMAN H. NEWBERRY,
Assistant Secretary of the Navy,
President, Navy Personnel Board,
Navy Department, Washington, D. C.

[Memorandum.]

HEADQUARTERS, U. S. MARINE CORPS,
PAYMASTER'S OFFICE,
Washington, D. C., October 6, 1906.

The increase in cost involved over present cost by the immediate increase in officers of line and staff departments by the following grades: One major-general commandant, 2 brigadier-generals, 1 lieutenant-colonel, 5 majors, 40 captains, 30 first lieutenants, 40 second lieutenants (all the foregoing line officers), 1 lieutenant-colonel, assistant adjutant and inspector; 1 lieutenant-colonel, 1 major, and 4 captains, assistant quartermasters; 1 major and 3 captains, assistant paymsters, is $250,460.

The cost involved over present cost in the ultimate increase of the corps to a strength of as follows: One major-general commandant, 3 brigadier-generals, 9 colonels, 9 lieutenant-colonels, 30 majors, 180 captains, 180 first lieutenants, and 144 second lieutenants (all the foregoing line officers), 1 brigadier-general, 1 colonel, 2 lieutenant-colonels, 5 majors (adjutant and inspector's department); 1 brigadier-general, 2 colonels, 2 lieutenant-colonels, 4 majors, and 16 captains (quartermaster's department); 1 brigadier-general, 1 colonel, 2 lieutenant-colonels, 2 majors, and 4 captains (paymaster's department), is $577,860.

Department's memorandum, October 5, 1906, returned herewith; no other papers before this office.

GEORGE RICHARDS,
Lieutenant-Colonel, Assistant Paymaster,
Acting Paymaster, U. S. Marine Corps.

The BRIGADIER-GENERAL COMMANDANT U. S. MARINE CORPS,
Headquarters, Washington, D. C.

NAVY DEPARTMENT,
BUREAU OF SUPPLIES AND ACCOUNTS,
Washington, D. C., October 23, 1906.

SIR: Inclosed herewith are memoranda showing the estimated annual increase in the appropriation involved by the plans for the reorganization of the various staff corps, forwarded with your memorandum, dated October 12, 1906—board's reports returned herewith.

Following is a recapitulation of the above-mentioned memoranda:

Total increase fiscal year 1908.

Medical corps	$38,732
Pay corps	22,332
Pay clerks	15,000
Construction corps (see note on memorandum No. 3)	12,488
Civil engineer corps:	
Army pay (proposed regrading)	13,840
Naval constructors' present pay	23,932
Naval constructors' proposed pay	35,132

Each of the staff board reports recommended a thirty-year retirement clause. This feature was not, however, considered in the estimates of increased cost, as no definite data concerning immediate retirements could be obtained, and any estimate thereon would necessarily be scarcely more than a guess.

Respectfully,

H. T. B. HARRIS,
Paymaster-General, U. S. Navy.

The SECRETARY OF THE NAVY.

[Memorandum of the increase in cost that would be involved over the present cost by the adoption of the plans proposed in the report of the Medical Corps personnel board.]

	Increase.
Change proposed in paragraph 3, page 1	$2,144
Change proposed in paragraph 4, page 1	3,000
Change proposed in paragraph 2, page 2	1,952
Change proposed in paragraph 1, page 3	9,000
Change proposed in paragraph 2, page 3	22,176
Total	38,272

[Memorandum of the increase in cost that would be involved over the present cost by the adoption of the plans proposed in the report of the Pay Corps personnel board.]

Changes proposed in paragraph C:	Increase.
Senior rear-admiral	$2,144
Minimum rank, lieutenant (junior grade)	4,950
Change proposed in paragraph D	7,588
Change proposed in paragraph E	7,650
Total for pay officers	22,332
Change proposed in paragraph H (pay clerks)	15,000
Total for pay officers and clerks	37,332

[Memorandum of the increase in cost that would be involved over the present cost by the adoption of the plans proposed in the report of the naval constructors' personnel board.]

	Increase.
Change proposed on pages 13, 14, and 15	$12,488

(NOTE.—The provisions of paragraph 3, page 15, relative to Chief of Bureau, etc., receiving the highest pay of their rank or grade after January 1, 1908, reduce this increase to $9,216 for fiscal year 1908, though a full year's increase would be $12,488.)

[Memorandum of the increase in cost that would be involved over the present cost by the adoption of the plans proposed in the report of the civil engineers' personnel board.]

	Increase.
Change proposed in paragraph 9, page 9	$13,840
Change proposed in paragraph 10, page 10, given pay of construction corps	23,932
If given pay of naval construction as proposed in report No. 7441	35,182

REPORT OF PERSONNEL BOARD IN REGARD TO STAFF CORPS AND MARINE CORPS.

Sir: The Board convened by your order of August 16, 1906, to "Consider existing laws governing the commissioned personnel of the Naval Establishment." and to submit three separate reports, has the honor to submit the following as the second of the required reports.

This report is intended to be considered in connection with the report submitted by the Board in the reorganization of the line of which it is a part and from which it is inseparable. The numbers herein recommended in the various grades are based upon those recommendations in the proposed reorganization of the line officers of the Navy. The needs of the service for an increase beyond 1,500 line officers have not been considered by the Board.

The Board has carefully considered the reports from the several committees of the staff corps and the Marine Corps appointed by your order, which reports are forwarded herewith.

I. MEDICAL CORPS.

The Board is of the opinion that the proper ratio that should exist between the number of officers of the Medical Corps and the number of officers of the line is 1 to 5. On the basis of 1,500 officers of the line, recommended by the Board, the number of officers of the Medical Corps authorized by existing law (345) is in excess of the number given by that ratio; a reduction of the authorized number is, however, not recommended. The distribution of officers in grades of the rank of captain and of commander should follow the percentages recommended by the board for officers of the line, viz, 7 per cent for captains and 7 per cent for commanders. The per cent of officers of the Medical Corps of the rank of lieutenant-commander should be 30, subject to the provision which follows below. All other officers should have the rank of lieutenant and lieutenant (junior grade), subject to the provisions which follow. On the basis of these percentages the Board, therefore, recommends the following numbers in the various grades: Medical directors, rank of captain, 24; medical inspectors, rank of commander, 24; surgeons, rank of lieutenant-commander and lieutenant, 104; passed assistant surgeons, rank of lieutenant and lieutenant (junior grade), and assistant surgeons, rank of lieutenant (junior grade), 193.

The above recommended increase in the grades of medical director, medical inspector, and surgeon should be made by as nearly equal annual increments as possible in the course of two years, and the increase to the total of 345 should be made in the manner now provided by law, by appointment each year of 20 assistant surgeons in excess of vacancies. Hereafter surgeons should have the rank of lieutenant-commander, or of lieutenant. They should not have the rank of lieutenant-commander until after twelve years' service in the Medical Corps. Passed assistant surgeons should have the rank of lieutenant or lieutenant, junior grade. They should not have the rank of lieutenant until after six years' service in the Medical Corps. Except as modified by the above provisions, the rank of officers of the Medical Corps should be as regulated by established law. The rank of no officer now borne on the list should be reduced by enactment of the above recommendations into law.

II. PAY CORPS.

The total number of officers in the Pay Corps should bear to the total number of officers of the line of the Navy the ratio of 1 to 6. The distribution of officers in grades of the rank of captain and of commander should follow the percentages recommended by the board for officers of the line, viz, 7 per cent for captains and 7 per cent for commanders. The percentage of officers of the Pay Corps of the rank of lieutenant-commander should be 30, subject to the provision which follows below. All other officers should have the rank of lieutenant and lieutenant, junior grade, subject to the provisions which follow. The board having recommended 1,500 as the desirable numerical

strength of the line, would, therefore, on the basis of the above ratio, recommend a total number of officers in the Pay Corps of 250, distributed in the different grades as follows: Pay directors, rank of captain, 17; pay inspectors, rank of commander, 17; paymasters, rank of lieutenant-commander and lieutenant, 75; passed assistant paymasters, rank of lieutenant and lieutenant, junior grade, and assistant paymasters, rank of lieutenant, junior grade, 141.

The above recommended increase in number of pay directors and pay inspectors should be made at once, and the increase to the total of 250 should be made in the manner now provided by law, by appointment each year of 10 assistant paymasters in excess of vacancies. Hereafter paymasters should have the rank of lieutenant-commander or of lieutenant; they should not have the rank of lieutenant-commander until after twelve years' service in the Pay Corps. Passed assistant paymasters should have the rank of lieutenant or lieutenant, junior grade; they should not have the rank of lieutenant until after six years' service. Assistant paymasters should have the rank of lieutenant, junior grade, and be promoted to passed assistant paymasters after three years' service. Except as modified by the above provisions, the rank of officers of the Pay Corps should be as regulated by established law. The rank of no officer now borne on the list should be reduced by enactment of the above recommendation into law.

It is recommended that paymasters' clerks be given temporary warrants, right to retirement, and benefits of accumulated service, as proposed in Senate bill No. 6413, introduced January 9, 1905, by the chairman of the Committee on Naval Affairs.

III. CHAPLAINS.

The number of chaplains in the naval service should be increased from 24 to 40, the increase being 4 a year. Promotion should be in accordance with established law. The manner of appointment of chaplains should be as the Secretary of the Navy shall direct, but the board suggests that, as nearly as may be practicable, the recommendations relating thereto in paragraphs 3, 4, and 5 of the report of the committee of chaplains be taken as a guide.

IV. PROFESSORS OF MATHEMATICS.

The board recommends no change in the corps of professors of mathematics beyond a recommendation for the substitution of army pay and allowances for the system of pay now established by law.

The board further recommends the repeal of section 1528, Revised Statutes, as obsolete and unnecessary.

V. NAVAL CONSTRUCTORS.

1. With a view to the future establishment of a single corps charged with ship design and construction and machinery design and construction, including electric plant and installation, the board recommends the gradual increase of the present corps of naval constructors, proceeding as specified in paragraph 4 below, the distribution in grades to be as specified in paragraph 6. The increase should be accomplished as specified in paragraphs 4 and 5. Officers so appointed

should be given such special course of instruction and such duty—both under the Bureau of Construction and Repair and under the Bureau of Steam Engineering—as shall best equip them for their duties; and also such limited sea service from time to time as will keep them in touch with the needs of the service afloat. The minimum amount of sea service of officers so appointed should be two years while in the grade of assistant naval constructors, and two years while in the grade of naval constructor, the latter before promotion to the rank of captain. Of the officers at present constituting the corps of naval constructors, assistant naval constructors should be obliged to have a total of two years of sea service before promotion to rank of captain. No sea service requirement should be exacted of naval constructors of full grade now borne on the list, although the board is of the opinion that a limited amount of sea service performed by these officers, whenever their services can be spared from necessary work on shore, would enhance their efficiency.

2. Officers appointed as above should, until the disappearance from the active list of line officers for engineering duty only, and the ultimate combination of the Bureaus of Construction and Repair and of Steam Engineering, have the titles of naval constructor and assistant naval constructor, and the Bureaus of Construction and Repair and of Steam Engineering should likewise retain their present names, the division of work and of responsibility remaining the same.

3. The status and duties of line officers at present borne on the list for engineering duty only should remain as at present, but with their disappearance from the active list they, as well as the present naval constructors, are to be succeeded by one body of technical officers for the combined duty of hull design and construction and of naval engineering. The title of these officers should then be appropriately changed to naval engineers and assistant naval engineers, and the name of the consolidated bureau to the Bureau of Naval Engineering.

4. The total number of naval constructors and of line officers for engineering duty only should gradually be brought up to and maintained at 120, and such should ultimately be the total number of naval engineers as defined above. Any commissioned officer of the line of the Navy on the active list below the rank of commander may, on his own application and with the approval of the Secretary of the Navy, be assigned to temporary duty with the corps of naval constructors, for duty both under the Bureau of Construction and Repair and under the Bureau of Steam Engineering, with a view to ultimate permanent transfer after expiration of one year and after passing an examination before a suitable board. The permanent appointment should be made by the President, by and with the advice and consent of the Senate. While serving temporarily with the corps, and after permanent appointment, such officer should have the same rank as he held in the line at the time of transfer, the date of precedence changed to accord with his new position on the Navy List. The total number of officers so transferred from the line should not exceed 15. Applications for transfer should be made within a year from the time of enactment of the law. Officers temporarily transferred and not found qualified for permanent transfer should resume their places in the line. To produce the increase to 120, beyond the number permanently transferred from the line in the manner indicated above, the appointments each year should not exceed 6, in addition

to vacancies, such vacancies to be the combined vacancies occurring in the corps of naval constructors as now constituted, plus those occurring or created in the number of line officers borne on the list for engineering duty only.

5. The appointments should be made each year from naval academy classes—including all line officers embraced within the precedence dates each year—three years from date of graduation; that is, when these officers come up for examination for promotion to lieutenant, junior grade. Applicants should be called for, a special examination held, and those found to be best fitted should be given appointments. Applicants must have had at least two years of sea duty on cruising vessels of the Navy, of which one year shall have been engineering duty. Any officer receiving an appointment who has had less than the required amount of engineering duty at sea should be sent to sea until he shall have completed the specified period. If a sufficient number is not obtained in this manner in any year, graduates of such technical schools and colleges as the Secretary of the Navy may designate should be invited to present themselves for examination, and, if successful, should receive appointments, and take rank and precedence in order of merit after the naval academy graduates selected. Such applicants should not be more than 26 years of age, and must have practiced not less than two years in one or more branches of engineering included in the scope of the proposed corps.

In addition to the foregoing, the President may appoint in each calendar year one chief carpenter or carpenter from the active list of the Navy to the grade of assistant naval constructor: *Provided*, That such officer shall not be over thirty years of age, that he shall have served at least four years as a warrant officer, and shall have passed such competitive examination as may be prescribed by the Secretary of the Navy.

6. The distribution in grades of naval constructors, and eventually of naval engineers, should be, of rank of captain, 10 per cent; of rank of commander, 10 per cent of the total number of naval constructors borne on the list, provided that the number of rank of commander and captain shall be increased by not more than one each year until the authorized number is reached. This distribution will proceed without regard to the number and the distribution in grades of line officers borne on the list for engineering duty only. Naval constructors below the rank of commander and assistant naval constructors shall take rank with Naval Academy graduates of the line, and officers appointed from civil life shall take rank similarly, according to date of precedence. Assistant naval constructors should be promoted to naval constructors after seven years' service in the corps of naval constructors.

7. The pay of assistant naval constructors should be as established by existing law. The yearly pay of naval constructors should be as follows: First five years after date of commission, $3,200; second five years after date of commission, $3,700; third five years after date of commission, $4,200; fourth five years after date of commission, $4,500; after twenty years from date of commission, $5,000. Shore pay and sea pay should be the same. Leave pay, for leave in excess of one month in any one calendar year, should be 20 per cent less than duty pay.

8. The Board recommends further: That for the Chief of Bureau of Construction and Repair an officer shall be appointed as assistant chief of bureau, the appointment to proceed in the manner governing the appointment of assistant chiefs of bureaus provided by existing law. Such assistant chief of bureau should be empowered to act for the Chief of Bureau in the latter's absence and should, while serving as assistant chief of bureau, have the highest pay of his grade.

VI. CIVIL ENGINEER.

1. The total number of officers in the corps of civil engineers should remain as now authorized, viz, 40; of whom not less than 28 should be civil engineers of full grade, and the remainder assistant civil engineers. The distribution of officers in grades of the rank of captain and of commander should follow the percentages recommended by the Board for officers of the line, viz, 7 per cent for captains and 7 per cent for commanders. The per cent of officers of the corps of civil engineers of the rank of lieutenant-commander should be 30, subject to the provision which follows below. All other officers should have the rank of lieutenant and lieutenant, junior grade, subject to the provisions which follow. On the basis of these percentages the authorized number of 40 in the corps of civil engineers will be distributed in grades as follows: Civil engineers, rank of captain, 3; civil engineers, rank of commander, 3; civil engineers, rank of lieutenant-commander, 12; civil engineers, rank of lieutenant or of lieutenant, junior grade, at least 10; and assistant civil engineers, rank of lieutenant or of lieutenant, junior grade, the remainder. The above-recommended increase in number of civil engineers of rank of captain and commander shall be made at once. The increase to the total of 40 in the corps of civil engineers shall be made as now provided by law, by appointment each year of 3 assistant civil engineers in addition to vacancies. Assistant civil engineers should be promoted to civil engineers of full grade after eight years' service as assistant civil engineers, unless promoted sooner to fill vacancies. No officer in the corps of civil engineers should have the rank of lieutenant-commander until he has had twelve years' service in the corps of civil engineers, and no civil engineer of full grade and no assistant civil engineer should have the rank of lieutenant until he has had six years' service in the corps of civil engineers.

2. Officers of the corps of civil engineers should have the pay and allowances of officers of same rank and length of service of the Army.

3. Vacancies in the grade of assistant civil engineer should be preferably filled by appointment of graduates of the Naval Academy, who should be given such course in civil engineering as the Secretary of the Navy may prescribe, or by appointment of civil engineers from civil life, under such requirements and after such examinations as the Secretary of the Navy may prescribe.

4. The Board recommends further: That for the Chief of Bureau of Yards and Docks an officer shall be appointed as assistant chief of bureau, the appointment to proceed in the manner governing the appointment of assistant chiefs of bureaus provided by existing law. Such assistant chief of bureau should be empowered to act for the Chief of Bureau in the latter's absence, and should, while serving as assistant chief of bureau, have the highest pay of his grade.

RECOMMENDATIONS APPLYING TO ALL STAFF CORPS.

1. That the thirty-year retirement law in force for officers of the Army should be made applicable to staff officers of the Navy.

2. That the army law relating to retirement of officers in the grade for which examined who on examination are found physically disqualified for promotion owing to causes incident to the service be made applicable to staff officers of the Navy.

3. That the rank and pay of no officer should be reduced by enactment into law of any of the above recommendations.

VII. MARINE CORPS.

1. It is considered that the question of increase of the enlisted force of the Marine Corps is a matter of departmental policy, and the board does not deem it within its province to make recommendations either for or against such increase. The board has, however, considered the question of adequately officering the present enlisted force, and recommends as follows:

That for the enlisted force as at present authorized, viz, 8,771 men, the number, rank, and distribution of officers in grades, both in the line and in the staff, are adequate to the needs of the naval service.

2. That second lieutenants should be promoted to first lieutenants after three years' service, provided at least one year shall have been service at sea or beyond the continental limits of the United States.

3. That an officer of the Marine Corps, found on examination for promotion to be morally disqualified, shall be wholly retired from the service, under the provisions of the act of August 5, 1882, applicable to officers of the Navy, which provisions should be made to extend to officers of the Marine Corps.

4. That when an officer of the Marine Corps is examined for promotion the examining board should, before proceeding with the physical and professional examination, satisfy itself as to the moral qualifications of the officer. If found morally disqualified, the board should base its recommendations on such findings without proceeding to the physical and professional examinations.

5. That field officers, before being promoted to the next higher grade, be subjected to a moral, physical, mental, and professional examination, as is now required for other officers of the corps.

6. That the present law be so modified as to permit captains of the line to be eligible for appointment to staff commissions of equal grade.

VIII. CHIEF WARRANT AND WARRANT OFFICERS.

The Board has considered the present status and needs of these officers, and, taking into consideration the best interests of the service, and to put all such officers on a uniform basis, recommends as follows:

1. That the title of warrant machinist be changed to machinist.

2. That the grade of chief machinist be established, and that six years after date of appointment as machinist machinists be eligible for promotion to chief machinists, subject to such examination as may be prescribed by the Secretary of the Navy.

3. That the grade of chief pharmacist be established, and that after six years from date of appointment as pharmacist pharmacists be eligible for promotion to chief pharmacists, subject to such examination as may be prescribed by the Secretary of the Navy.

4. That the pay and allowances of carpenters, machinists, sailmakers, pharmacists, chief carpenters, chief machinists, chief sailmakers, and chief pharmacists be the same in all respects as prescribed for boatswains and chief boatswains.

5. Should the recommendations of the Board to change the title of warrant machinist to machinist and establish the grade of chief machinist be enacted into law, section 2522, Revised Statutes, should be amended so as to make chief machinists and machinists eligible for appointment to the grade of ensign, as now provided for warrant machinists.

6. That carpenters and chief carpenters be eligible to appointment in the commissioned corps of naval constructors under the same conditions and restrictions as now provided by law for the appointment of boatswains, gunners, and warrant machinists to commissioned rank in the line.

Very respectfully,

TRUMAN H. NEWBERRY,
Assistant Secretary of the Navy, President of the Board.
C. H. STOCKTON,
Rear-Admiral, U. S. Navy, Member of Board.
C. E. VREELAND,
Captain, U. S. Navy, Member of Board.
H. H. HOSLEY,
Commander, U. S. Navy, Member of Board.
ALBERT GLEAVES,
Commander, U. S. Navy, Member of Board.
EMIL THEISS,
Lieutenant-Commander, U. S. Navy, Member of Board.
HILARY P. JONES,
Lieutenant-Commander, U. S. Navy, Member of Board.
CLELAND DAVIS,
Lieutenant-Commander, U. S. Navy, Recorder of Board.

DEPARTMENT OF THE NAVY,
BUREAU OF MEDICINE AND SURGERY,
Washington, D. C., November 20, 1906.

SIR: In the absence of the Surgeon-General of the Navy, the president of the subboard appointed to examine existing laws relating to commissioned personnel of the Navy as affecting the Medical Corps, and to make such recommendations looking to future legislation as may be desirable and necessary for the efficiency of the service, we beg leave to report that the Board has this day received the Department's letter of November 12, inclosing a copy of that portion of the report of the Personnel Board which relates to the Medical Corps of the Navy, for consideration and comment, and we beg leave to submit the following remarks:

1. The ratio of one to five proposed by the Personnel Board as a just and proper one to fix between the numbers of the Medical Corps

and the line does not at the present time meet the demands of the service for medical officers. A change in the ratio will indeed be required with a further increase in the Navy, as the present number allowed—345—was carefully computed upon the basis of the present needs of the service. That this is true is abundantly shown by the great difficulty the Bureau of Medicine and Surgery meets with in finding medical officers to do the absolutely necessary duties in this time of peace. Were it practicable to fill up at once the Medical Corps to the full number of 345 men allowed by law, there would then be no excess in the number required to meet the actual needs of the Navy to-day. We believe that this estimate of one to five should not be made a hard-and-fast rule without flexibility to allow of future adjustment of numbers in accordance with demonstrated needs of the service in case of expansion.

Upon this ratio the Personnel Board recommends that the numbers and rank of the different grades be fixed as follows: Twenty-four medical directors with rank of captain, 24 medical inspectors with rank of commander, 104 surgeons with rank of lieutenant-commander or lieutenant, and 193 passed assistant and assistant surgeons with rank of lieutenant or lieutenant, junior grade; a total of 345, the number now allowed by law. The method of recruiting the corps by appointments to the lowest grade is also recommended to be continued as now established by law. All this would, we believe, be satisfactory and it is nearly in line with the first report of this board except in the matter of rank.

In the portion of this report of the Personnel Board submitted to us for comment no reference is made to the recommendation of this board that officers of the Medical Corps be recommissioned with the titles of their rank as set forth in our report of October 1, in the second and following paragraphs.

In submitting its preliminary report this board did not deem it necessary to enter at length upon a statement of the grounds upon which this recommendation was made. The present cumbersome and inconvenient titles applied to staff officers of the Navy are intended to describe their occupations, and even this they do very imperfectly. In a military organization the only purpose of a title is to serve as a designation of rank. The effect of the present system of conferring a rank upon an officer but withholding the right to a title which would clearly define it is to confer an equivocal rank, which places him in an anomalous position in his relations with officers and men of the Navy, with officers of the Army and other military organizations, and with civilians. In his official and other relations the equivocal rank so conferred has frequently been interpreted to his disadvantage, and it always remains open to such interpretation. This state of things has never been satisfactory to the medical officers of the Navy; indeed it has been for years a cause of dissension and irritation in the service and should be corrected.

An officer of the line employed as a navigator, an inspector of steel, or engineer of a ship bears at all times the title of his rank and not the title of his occupation. An officer of the Medical Corps serving as a chief of bureau, administering naval discipline in a hospital under his command, sitting on a court-martial, or performing any other duty of a military or administrative character, is denied the title

which defines his status and authority and which properly pertains to the dignity of his office.

We are emphatically of the opinion that this cause of dissatisfaction and dissension in the service should be removed in the interest of efficiency, and we know of no valid reason why it should not be done.

The rank and pay of officers of the Medical Corps of the Navy have been assimilated in many respects by recent legislation to that of medical officers of the Army with much benefit to the service. The conferring upon medical officers of the Navy of titles to indicate their rank will still further assimilate the sister services and will remove one of the relative disadvantages, a most important one, under which the Medical Corps of the Navy labors in recruiting its numbers. The rank titles with corps designations, proposed in our preliminary report of October 1, are concise and definite and are identical with those which have been approved by the Army General Staff, the Secretary of War, and the President, and embodied in a bill now before Congress, the enactment of which is confidently expected at the coming session.

2. There is no reference made and no opinion expressed by the Personnel Board upon our recommendation that the Surgeon-General of the Navy should have the rank and emoluments of a rear-admiral of the upper nine numbers, and that an additional grade of three medical officers be created with the rank and pay of rear-admiral of the lower numbers. This recommendation appears to us worthy of consideration as a just and equitable measure, as set forth under this head in our first report. If the basis of a fixed ratio of numbers with the line is to be used, there is surely no good reason why flag rank should not be open to officers of the Medical Corps of our Navy, as in the navies of the other great nations of the world, or why they should be denied a just share in the higher honors toward the end of a lifelong service in the Navy. Only a few medical officers could, under the proposed scheme, reach this rank of rear-admiral, whereas it is open to every officer of the line.

3. The recommendation of the Personnel Board to require twelve years' service of a surgeon before he shall have the rank of lieutenant-commander and six years before a passed assistant surgeon shall have that of lieutenant would undo in a great measure the benefits derived from the act of Congress of March 3, 1903, granting increased rank to junior medical officers, one great object of which was to offer inducements to properly qualified young medical men to enter the Navy; indeed those now in the service entered under that implied contract, and any such reduction in rank as applied to them would appear to be an act of bad faith upon the part of the Government.

In order to obtain medical officers for the Navy whose professional qualifications are up to the standard now fixed by the examining board, the stubborn fact must be recognized that in this country such men find a better career in private life than in the Government services, and to attract them special advantages must be offered or else the standard of qualifications lowered.

The same question, about the years 1872, 1873, 1874, confronted the British Admiralty, who were deaf to the appeals of the medical officers of their navy, as well as to those of the medical schools and socie-

ties of Great Britain, until a dearth of candidates for admission finally constrained the authorities to meet the demands, whereupon more liberal rank, pay, and privileges restored the flow of surgeons into the navy.

The advantages then granted to the British naval medical officers thirty years ago, in the way of increased rank, retiring privileges, and pay, compared with the line, were greater than those we are asking to-day in our own service.

The short time in which the present junior surgeons attain, under the act of Congress of March 3, 1903, the rank of lieutenant-commander is but an extraordinary occurrence due to the sudden increase of numbers. This will adjust itself to slower promotion within a few years, and the surgeon will get his promotion not much, if at all, before twelve years from date of first appointment.

The splitting of grades proposed by the Personnel Board, giving us two kinds of surgeons and two of passed assistants, is undesirable, leads to confusion, is vexatious and derogatory to the dignity of the offices. The present law giving medical officers the rank of junior lieutenant upon appointment and that of lieutenant after their first examination for promotion three years later, surely can not be justly considered excessive in view of the facts cited above, and any reduction in this respect would at once place medical officers, a large majority of whom now enter the service above 25 years of age, at a disadvantage, grade for age, as compared with line officers.

We again beg leave to urge earnestly that the recommendation in regard to rank and title made in the first report of this board be adopted as the simplest method of settling this vexed question to the best interests of the service, in even justice to the Medical Corps and with injustice to none.

Very respectfully,

GEO. E. H. HARMON,
Medical Director, U. S. Navy.
JAMES F. LEYS,
Surgeon, U. S. Navy.

The SECRETARY OF THE NAVY.

DEPARTMENT OF THE NAVY,
BUREAU OF MEDICINE AND SURGERY,
Washington, D. C., December 3, 1906.

SIR: During my absence in Panama with the President, the submedical board, of which I have the honor to be president, was called upon to meet and reply to the strictures made by the Personnel Board in regard to the recommendations made by the submedical board. The reply of my colleagues on the subboard meets with my approval for the most part, but is so entirely inadequate to express the immense injury to the Medical Corps which would result if the recommendations of the Personnel Board were carried out that I beg to call your attention to what would be the result of such legislation.

The present vacancies in the Medical Corps number 44, with 25 additional vacancies to be filled on January 1st. The urgent need for filling these vacancies (69 in number) is more and more apparent to the Bureau every day. Every effort has been made to fill these vacancies by qualified men. The Personnel Board proposes to fill

them by cutting down their pay and rank in the beginning of their career and which would absolutely debar the corps from recruiting from civil life, the only place from which it can be recruited. No graduates of our great colleges would think of coming into the Navy if they were not permitted to reach the rank of lieutenant for six years (now three years) or lieutenant-commander for twelve years. It is to be remembered that these men are mature men when they enter the service—many of them from 28 to 30 years of age. In twelve years they will be in middle life and their career should be established. Furthermore, the Personnel Board says that a medical officer shall be six years in reaching the rank of lieutenant and twelve years in reaching the rank of lieutenant-commander, but does not state that it may not be many years longer, and in years gone by many of our medical officers have actually exceeded these limits.

As regards this particular portion of the corps, the recommendations of the Board actually make the future conditions far worse than at present, in fact, impossible.

The present number of medical officers allowed, if we could get sufficient inducements to get them in the service, would be ample, in my opinion, for the needs of the service for many years. The proportion of the heads of grades, as recommended by the subboard after its first meeting, would give an incentive to young men to enter the service, but the strictures as recommended by the Personnel Board would be absolutely disastrous in regard to successfully obtaining suitable men for the service.

The recommendation made by the Personnel Board of an increased number of surgeons is appreciated so far as numbers go, but the fact that they lose so much in rank when compared with the present status of the same members of the corps robs this provision of all material benefit, in fact the loss of rank which this brings to the younger surgeons makes the conditions worse than at present.

Very respectfully,

P. M. RIXEY,
Surgeon-General U. S. Navy.

The SECRETARY OF THE NAVY.

WASHINGTON, D. C., *November 21, 1906.*

SIR: 1. The board of pay officers appointed by the Department's order of August 31, 1906, has received a "copy of that portion of the report of the Personnel Board * * * which relates to the Pay Corps of the Navy" transmitted with the Department's letter of November 12, 1906.

2. Careful consideration of this report in comparison with this board's recommendations, dated September 29, 1906 (and its elaboration thereof under date of October 31, 1906), shows that the Personnel Board concurs with the board of pay officers as to the thirty-year retirement law, the improvement in the status of paymasters' clerks, and the distribution of pay officers in the grades of captain and commander; omits any mention of the age limit for admission into the Pay Corps, as well as the rank of the Paymaster-General, and the question of distinctive rank titles for pay officers; and agrees to a

greater or less extent to the various other propositions submitted by us. The recomendations of the Personnel Board which come within the class last described will be hereinafter commented on in brief detail.

3. Basing our original recommendation upon the present strength of the line, we suggested the ratio of 1 to 5, contemplating a gradual increase in the Pay Corps thereafter as it becomes necessary to increase the line. In view, however, of the Personnel Board's recommendation, as we understand it, that the line be immediately increased to 1,500 officers, and as no proportionate increase is deemed immediately necessary for the Pay Corps, we concur in the recommendation that this ratio be 1 to 6.

4. As regards the number of pay officers who should have the rank of lieutenant-commander, we concur in the general idea which the Personnel Board appears to have in mind; but would point out that, according to the wording of its recommendation on this subject, the proposed change would, as compared with present conditions, retard promotion instead of accelerating it. Twelve years in the Pay Corps is considered a reasonable time to attain the rank of lieutenant-commander; but we do not believe that it is necessary to have 30 per cent of the Pay Corps comprised in that grade. Hence the general idea of the Personnel Board might, in our opinion, be more clearly and effectively expressed by arranging that each pay officer having twelve years' service as such be promoted to the grade of lieutenant-commander, provided that this grade embrace not less than 20 (not 30) per cent of the total number of pay officers—it being understood that this should not prevent a pay officer from being promoted automatically in consequence of the promotion of his opposite number in the line.

5. We agree with the Personnel Board that pay officers should not attain the rank of (senior) lieutenant until after having performed six years' service in the corps, provided, of course, that this should not operate to nullify the present practice of following opposite numbers in the line. If the law is to be so framed that a line officer must serve six years after being commissioned before he can enter the grade of lieutenant, then we see no good reason why the same rule should not apply to pay officers.

6. We most heartily agree with the Personnel Board in the opinion that not more than ten officers should be appointed to the Pay Corps in any one year as the result of the provisions of the proposed legislation; indeed, we had exactly this idea in mind when we first suggested the annual adjustment based upon what we thought would be a steady but gradual increase of the line. If, as seems to be the case, this increase of the line is to be en bloc, then, of course, some limitation is both desirable and necessary; and, subject to the foregoing remarks, we consider the restriction proposed by the Personnel Board as eminently proper.

7. We entirely concur with the Personnel Board in the two new propositions it offers—

that the rank and pay of no officer should be reduced by enactment into law of any of the above recommendations; and that the Army law relating to retirement of officers in the grade for which examined, who, on examination, are found physically disqualified for promotion, owing to causes incident to the service, be made applicable to Staff Officers of the Navy.

8. Inasmuch as several of the most important recommendations made by the board of pay officers have been passed over by the Personnel Board without remark of any kind, the board of pay officers would particularly request definite information as to the Personnel Board's position on each of said propositions, in order that the board of pay officers may, in offering its proposed draft of a Pay Corps act, submit such further facts in connection therewith as may be deemed pertinent.

Respectfully,

H. T. B. HARRIS,
Paymaster-General, U. S. Navy, Retired.
F. T. ARMS,
Pay Inspector, U. S. Navy.
S. MCGOWAN,
Pay Inspector, U. S. Navy.

The SECRETARY OF THE NAVY.

WASHINGTON, *November 27, 1906.*

SIR: 1. The board of pay officers appointed by the Department's order of August 31, 1906, after very carefully considering its several suggestions heretofore made and in connection with the propositions referred to it (through the Department) by the Personnel Board, is convinced that the best interests of the Pay Corps and of the naval service would, under all the circumstances, be advanced by the enactment of the bill herein proposed.

2. As to the features touched upon in the report of the Personnel Board, it is believed that, in general, no wide differences will be found between the actual results which would be brought about by enacting this proposed legislation and the results contemplated by the Personnel Board. It has, in some cases, been deemed necessary to more explicitly make mandatory certain provisions for just the promotion which is apparently contemplated by the report of the Personnel Board, but which it is thought might, according to the wording of the Personnel Board's report, not actually occur in all cases, thus defeating the purpose apparently aimed at.

3. The subject referred to in paragraph B of this board's reports of September 29 and October 31, 1906—that of age limits for entrance to the Pay Corps—has not been touched upon in the report of the Personnel Board. Special attention is therefore invited thereto; and this board reiterates its recommendations as contained in its former report, pointing out that the change therein suggested quite naturally follows from the increased rank for the lowest grade in the Pay Corps recommended by the Personnel Board. The present age limits for entrance to the Pay Corps are from 21 to 26 years; and it has been found that there are comparatively very few men between these ages who have the business training and the necessary education to make them desirable candidates for appointment. Many appointees to the Pay Corps in the past few years have been comparatively young men; and an all too great proportion of them have found, by their own bitter experience, that a few years' business training would have saved them considerable amounts of money, if not, indeed, disaster. The present age limits preclude a college graduate, who has after gradua-

tion passed two or three years in civil life, from entering the Pay Corps; and it is believed that a much more eligible and adaptable class of men can be obtained by raising the age limits to be from 24 to not more than 30 years of age.

4. The need for a decided impetus to promotion in the Pay Corps is very manifest; and unless some such plan as is herein suggested be adopted for the purpose of facilitating promotion from the lowest grades it will soon become impracticable to obtain really desirable men for entrance into the Pay Corps and impossible to long retain a number of those already secured.

5. The Hon. John D. Long, when Secretary of the Navy, took occasion to describe chiefs of bureaus of the Navy Department as a class of officers discharging "duties of the greatest importance to the services, and who, in their respective spheres, exercise authority superior to that of a commander in chief of a naval squadron." The duties and responsibilities of bureau chiefs have increased rather than diminished with the steady growth of the Naval Establishment since that time (1900); and it would seem to be axiomatic that a class of officers upon whom such duties devolve and to whom such responsibility is intrusted should (by increasing their rank and emoluments to that of rear-admiral of the senior grade) be placed in a status commensurate therewith.

6. Another subject not referred to by the Personnel Board, and one which is deemed to be of the highest importance, is that contained in paragraph F of this board's reports of September 29 and October 31, 1906—distinctive rank titles. In the Army and Marine Corps the quartermasters, commissaries, and paymasters (who, together, correspond identically with the Pay Corps of the Navy) have the titles of the rank which they hold, and this without detriment to the service or derogation of the rank or titles of other officers. Naval pay officers are commissioned in the same words, yet the so-called grade names by which these pay officers are officially addressed afford neither title nor any indication of their official status, because an assistant paymaster, for instance, may have the rank of either ensign or lieutenant, junior grade—two separate and distinct naval ranks—whereas the corps designation means nothing, either within or without the service; and if the attempt be made by a pay officer to explain that he has the rank of lieutenant, for example, the presumption invariably arises that he must be endeavoring to "sail under false colors," simply because he can not admit that he is a lieutenant in the Pay Corps of the Navy, although the President of the United States has, "by and with the advice and consent of the Senate," commissioned him as an officer of the Pay Corps with the positive actual and real rank of "lieutenant." The practical result is that the average man, either within or without the service, is not inclined to pursue the subject sufficiently far to learn that an officer can be commissioned with a rank which he is, in effect, forbidden to make known, and there the matter rests. It has often been said that titles indicative of rank are primarily and necessarily indicative of and inherent in the right to "command ships and men;" but this does not hold true, for there are at this time a considerable number of line officers on the active list of commanders and captains who are by law restricted in their work to "engineer duty only on shore only" and are ineligable for duty in "command of ships and men." The duty of any officer which makes

him subject to military orders, whether in the Army, Navy, or Marine Corps, of itself makes him a military officer, no matter how the meaning of the word may be confused, and in this respect all seagoing officers are, and of right ought to be, on precisely the same basis, being all in the service of the nation and all equally a part of the military forces which defend it. The proposed distinctive rank titles for pay officers, with the addition of the name of the corps to which they belong, would, while showing the legal status of the officers with reference to other officers, be still as completely definitive and descriptive of their duties as is the present form.

7. In view of all the foregoing and of the facts set forth in this board's reports of September 29 and October 31, 1906, we believe that the best interests of the naval service will be promoted by enacting the following:

A BILL To increase the efficiency of the United States Naval Pay Corps.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the present grade names—assistant paymaster, passed assistant paymaster, paymaster, pay inspector, pay director—be abolished, and that all officers now on the active list of the Pay Corps of the United States Navy be recommissioned in the following language, according to the gradation hereinafter established:

Rear-admiral, Paymaster-General, United States Navy.
Captain, Pay Corps, United States Navy.
Commander, Pay Corps, United States Navy.
Lieutenant-commander, Pay Corps, United States Navy.
Lieutenant, Pay Corps, United States Navy.
Lieutenant (junior grade), Pay Corps, United States Navy.

That from and after the passage of this Act the number of officers on the active list of the Pay Corps allowed by law shall be not less than one-sixth of the number of commissioned officers allowed by law for the active list of the line of the Navy of and above the grade of ensign. That vacancies occurring in the lowest grade of the Pay Corps, in conformity with the foregoing provisions, shall be declared to exist on the first day of each July; and that not more than ten officers shall be appointed to the Pay Corps in any one fiscal year to fill vacancies caused by the increase thereby authorized.

That all pay officers now in the service having the rank of ensign shall, after passing the necessary examination, be at once recommissioned in the grade of lieutenant (junior grade).

That a candidate for original appointment to the Pay Corps shall be not less than twenty-four nor more than thirty years of age.

That, at the expiration of six years from the date of his original appointment, every pay officer shall be promoted to the grade of lieutenant; and that each officer of the Pay Corps shall, at the expiration of twelve years from the date of his original appointment as a pay officer, be promoted to the grade of lieutenant-commander: *Provided*, That this grade in the Pay Corps shall not at any time contain less than twenty per centum of the total number allowed by law of officers in the corps: *Provided further*, That every officer of the Pay Corps who shall not have been promoted to the grade of lieutenant upon the date of the promotion to that grade of the officer of the line whose date of precedence in the Navy is the same as (or next prior to) his own shall be promoted to that grade simultaneously with such line officer: *And provided further*, That every officer of the Pay Corps who shall not have been promoted to the grade of lieutenant-commander upon the date of the promotion to that grade of the officer of the line whose date of precedence in the Navy is the same as (or next prior to) his own shall be promoted to that grade simultaneously with such line officer.

That the paymaster-general of the Navy shall have the rank, pay, and allowances of a rear-admiral of the senior line.

That the grades of commander and captain in the Pay Corps shall each contain the same proportion of the whole number of officers of the Pay Corps allowed by law as the grades of commander and captain in the line embrace, respectively; that the total number of officers on the active list of the line allowed by law of and above the grade of ensign.

That no officer shall be promoted in consequence of the provisions of this act until he shall have satisfactorily passed the examination as now provided by law.

That when a pay officer has been thirty years in service he may, upon his own application, in the discretion of the President, be placed on the retired list.

That should a pay officer fail in his physical examination for promotion and be found incapacitated for service, by reason of physical disability contracted in line of duty, he shall be retired with the rank to which his seniority entitled him to be promoted.

That retired officers of the Pay Corps shall be treated in the same manner in respect to titles as officers on the active list, as hereinbefore provided.

That clerks to pay officers of the Navy, appointed under existing law, shall be temporarily warranted from time to time by the Secretary of the Navy, upon nomination by officers of the Pay Corps of the Navy, and, during the period of their service, shall have the same pay and allowances as other warrant officers of corresponding length of service; and that they may be retired, at the discretion of the Secretary of the Navy, under the provisions of this act, after thirty years' accumulated service, with three-fourths of the full pay of such warrant officers: *Provided*, That no clerk shall be retired under the provisions of this act until he shall have attained the age of sixty-two years; and the period, or periods, during which he may be, or has been, awaiting assignment or appointment shall not be construed to count as service; that upon completion of the duty of a pay officer entitled to the services of a clerk, the warrant of said clerk shall be void until he shall again be nominated by an officer of the Pay Corps for temporary warrant; that, for the purposes of fixing rates of pay and computing length of service for retirement, all pay clerks shall be credited with previous service in the Navy or in the Army or Marine Corps; that, upon the passage of this act, clerks who have thirty years' accumulated creditable service, and who have reached the age of sixty-two years, may, upon their own application, be retired from active service as hereinbefore provided; that clerks serving under temporary warrants may be retired from active service for disabilities incurred in line of duty, as now provided by law for other officers.

That no part of this act shall operate to reduce the rank or pay of any officer now in the service.

That all acts and parts of acts inconsistent with this act be, and the same are hereby, repealed.

8. Taking the precedence list as it actually stands to-day, and basing the numbers allowed in the grades of captain and commander on the Personnel Board's suggested proportion (line and Pay Corps alike) of 7 per cent of the total number for each of these grades, the immediate effect of enacting into law the foregoing bill would be to distribute the (allowed) 200 pay officers now on the active list as follows: Captains, Pay Corps, 14; commanders, Pay Corps, 14; lieutenant-commanders, Pay Corps, 40; lieutenants, Pay Corps, 79; lieutenants (Junior Grade), Pay Corps, 53.

Very respectfully,

H. T. B. HARRIS,
Paymaster-General, U. S. Navy, Retired.
F. T. ARMS,
Pay Inspector, U. S. Navy.
S. MCGOWAN,
Pay Inspector, U. S. Navy.

The SECRETARY OF THE NAVY.

UNITED STATES NAVAL ACADEMY,
Annapolis, Md., December 3, 1906.

SIR: In connection with your communication of November 13, 1906, I have the honor to report that so far as I have been able to reach the members of the board of which I am the head, the board

has no comment to make on the action of the Personnel Board with regard to the corps of chaplains, other than expressing its pleasure at such action.

Very respectfully,

HENRY H. CLARK,
Chaplain, U. S. Navy.

To the SECRETARY.

U. S. NAVAL ACADEMY,
Annapolis, Md., November 16, 1906.

SIR: I have the honor to acknowledge the receipt of your letter of the 13th instant, No. 5288–35, inclosing a copy of that portion of the report of the Personnel Board which relates to the corps of professors of mathematics.

The Personnel Board having approved the recommendations of the subboard of professors of mathematics, the latter has no further comments or suggestions to offer.

Very respectfully,

PHILIP R. ALGER,
Professor of Mathematics, U. S. Navy,
Senior Member of Subboard.

The SECRETARY,
Navy Department, Washington, D. C.

NAVY DEPARTMENT,
Washington, D. C., November 28, 1906.

SIR: 1. In compliance with the instructions contained in the Department's letter No. 5288–35, of November 12, 1906, inclosing copy of that portion of the report of the Personnel Board which relates to the construction corps of the Navy, this Board has the honor to submit the following:

(1) It is noted that the partial report is intended to be considered in connection with the full report submitted by the Personnel Board for the reorganization of the line, of which it is a part and from which it is inseparable. Full consideration and comment cannot be made until this board is advised of the contents of that report, and it respectfully requests to be supplied with a copy thereof. This board, however, is of the opinion that the advisability of "the future establishment of a single corps charged with ship design and construction and machinery design and construction, including electric plant and installation," is indisputable, but the details can not be properly considered until the board has before it the full report of the Personnel Board on all matters relating to the organization of the Department.

(2) With regard to the methods of transfer to the construction corps, etc., the following suggestions are made:

(a) The requirements as to sea service should be more flexible, so as not to operate injuriously to the interests of the service, and should leave to the Department reasonable discretion in the application of said requirements.

(b) The advisability of sea service is fully recognized, the exigencies of the service alone preventing its having been given more continuous effect in the past.

In this connection it should be noted that the Bureau of Construction and Repair was itself the means of having the provision authorizing sea service inserted in the regulations about ten years ago.

(3) It is believed that the proposed method of immediate transfer of the 15 officers provided for would operate disadvantageously for the following reasons:

(a) Undue stagnation in promotion by reason of the majority of the officers so transferred being approximately of the same age.

(b) Serious effect upon the promotion of officers already in the corps who would be junior to officers so transferred.

(c) Inability to transfer to the construction corps, except during a period of one year, officers of the line who showed special aptitude for construction or engineering work, but whose rank was greater than that of ensign.

(4) The board adheres to its previous recommendation, that such transfers be made from those below the grade of lieutenant-commander, but is prepared to modify that recommendation so that a certain proportion of this number should be allowed in the grade of lieutenant-commander if, after due consideration of the full report of the board, such recommendation seems advisable.

(5) Comment upon such portions of the report of the Personnel Board as relate to an ultimate combination of the Bureaus of Construction and Repair and Steam Engineering, and of the status and duties of officers at present borne on the list for engineering duty, must be deferred until the board has considered the complete recommendations of the Personnel Board with respect to the reorganization of the Navy, as previously noted. It seems proper to state, however, that this board sees no justification for an arbitrary change of title from naval constructor to naval engineer with the disappearance from the active list of the line officers at present borne on the list for engineering duty only.

As a matter of fact, the title of "naval constructor" existed long prior to that of "naval engineer;" it is, moreover, most comprehensive in character and would seem to be a much more appropriate designation for those engaged in naval architecture, electrical work, marine engineering, and other matters of naval material, than the title proposed.

(6) All officers before transfer to the construction corps should pass a satisfactory examination before a board of naval constructors, in a manner similar to that now provided for officers of other branches of the naval service. In the transfer of officers who are supposed to have special attainments it is believed that the composition of the board should not be left indefinite, but that present practice with respect to examinations in other branches of the service should be rigidly adhered to.

(7) As previously noted, the board considers it inadvisable that fifteen transfers should be made in one year, and also questions the advisability of insisting upon a minimum of one year's service in the engine room of a cruising vessel of the Navy for officers so transferred, but defers further comment until the receipt of the full report of the Personnel Board.

(8) The board assumes that paragraph 6 of the report of the Personnel Board is to be construed as meaning that the distribution in

grades of naval constructors should be in percentages of the total number of the corps of naval constructors.

(9) The board notes the omission in paragraph 7 of the report of the Personnel Board of any reference to allowance for quarters, fuel, etc.; it assumes that this omission was an inadvertence and that no change in present practice of allowances to officers of all branches of the service in accordance with their rank is contemplated in the full report of the Personnel Board.

(10) It is noted that no reference is made by the Personnel Board to certain recommendations of this board in relation to the pay of chief of bureau, assistant chiefs of bureau, and officers at certain navy-yards, nor with regard to the official designation of officers of the corps of naval constructors. While the subboard sees no reason to modify the opinions expressed in its previous report, subject to the conditions therein made, it refrains from making further comment until it has had an opportunity to consider the full report of the Personnel Board in all matters relating to the personnel and organization of the naval service.

Very respectfully,

W. L. CAPPS,
Chief Constructor, U. S. Navy, President of Board.
W. J. BAXTER,
Naval Constructor, U. S. Navy, Member.
R. H. ROBINSON,
Naval Constructor, U. S. Navy, Member.

The SECRETARY OF THE NAVY.

DEPARTMENT OF THE NAVY,
BUREAU OF YARDS AND DOCKS,
Washington, D. C., November 30, 1906.

SIR: That portion of the report of the Personnel Board relating to the civil engineer corps which has been referred to the board representing the civil engineer corps with your letter, No. 5288-35, of November 12, 1906, has been received, and after careful consideration the following comments are respectfully submitted.

2. The report of the board representing the civil engineer corps is summarized and classified in following paragraphs:

3. It was recommended that the civil engineer corps consist of 28 civil engineers and 12 assistant civil engineers, as now authorized by law. That assistant civil engineers be promoted to civil engineers as vacancies occur in the higher grade, or after eight years' service as assistant civil engineers. That assistant civil engineers be appointed from civil engineers in civil life, or from graduates of the Naval Academy who should be given a special course in civil engineering. The Personnel Board concurs in the foregoing recommendations.

4. It was recommended that a civil engineer be detailed as Assistant Chief of the Bureau of Yards and Docks and that he receive the highest pay in his grade during such detail. The Personnel Board recommend that an officer be appointed as assistant chief of bureau, the appointment to proceed in the manner governing the appointment of assistant chiefs of bureaus provided by existing laws, such

assistant chief of bureau to be empowered to act for the chief of bureau in the latter's absence, and to have the highest pay of his grade. In considering this matter the board of civil engineers consulted the laws governing the assistant chiefs of such bureaus as had them, and found considerable variation in the general wording, and selected the law governing the assistant chief of the Bureau of Navigation as a general guide in its recommendation. In that law the selection of an assistant chief appears to be a discretionary detail by the Department, and not a mandatory appointment. In the case of the Bureau of Yards and Docks it is believed that for the assistant chief of bureau a civil engineer should be definitely provided for in the wording recommended by the civil engineer's board.

5. It was recommended that voluntary retirement after thirty years' service, in the discretion of the President, be provided, and this recommendation is concurred in by the Personnel Board.

6. It was recommended that when retired for disability incurred in the line of duty an officer be retired with the next higher rank and three-fourths of the next higher pay. For this recommendation the Personnel Board have substituted the Army law which limits the advancement of rank and pay on retirement for disability incurred in the line of duty to such time as an officer may be examined for promotion. The recommendation of the civil engineer board is of a more liberal nature and less likely to result in an unavoidable discrimination against an officer who may receive a sudden and total disablement.

7. The recommendations concerning the pay of the chief of bureau, leave of absence of civil engineers, and titles corresponding to rank, have apparently not been treated of in the report of the Personnel Board, at least in such portions as have reached the civil engineer board. In the matter of titles the staff officers of the Navy are discriminated against as compared with the staff officers of the Army and Marine Corps.

8. After careful consideration and study of the matter the civil engineer board made two recommendations relating to rank and pay. The first recommendation was based on a consideration of army pay being adopted for all corps of the Navy, and the second and preferred recommendation was based on the civil engineer corps receiving the same pay as the naval constructors corps. Neither of the recommendations are concurred in by the Personnel Board. The Personnel Board recommends that the civil engineer corps have army pay and allowances, and a distribution of rank based upon an assumed percentage in the line of the Navy which does not exist, and by which the civil engineers will greatly suffer as compared with the existing distribution of rank in the line as now authorized by law. The attaining of the rank recommended is retarded by time limitations in the case of the most of the corps. In connection with this it is also recommended that the pay of no civil engineer shall be reduced, but it is not recommended that the pay which a civil engineer would otherwise have received shall not be reduced.

9. The recommendation of the Personnel Board would improve the rank of the civil engineer corps as compared with that which at present exists, but legislation is not necessary to effect this, as the law provides that it can be done by Executive order. The recommenda-

tion of the Personnel Board will increase the pay of the first six civil engineers, but will not change the pay of the balance of the civil engineers who have reached their maximum pay, and will retard or seriously injure the pay of the civil engineers who have not reached their maximum pay. The pay of future assistant civil engineers not yet in the service will be benefited by the recommendations of the Personnel Board, but their pay as civil engineers will be retarded and injured. The only way in which the pay of most of the present civil engineers can be saved from reduction by the recommendations of the Personnel Board is by a carefully worded enactment providing that the pay they would otherwise have received shall not be reduced and such wording can only be safely prepared by the Comptroller of the Treasury, who is the one who finally passes on its meaning.

10. In changing a corps from a longevity basis of pay to one based on rank and advancement of rank the utmost care is necessary to prevent an injustice being done. On a longevity basis the pay progresses independently of the rank, while on the rank basis the pay can only advance with the rank. In the case of the line an officer's importance and value to the service is directly proportional to his rank; no matter what his length of service, his rank limits him to certain duties and he can not have actual experience of higher duties, but only the superficial observation. In the case of a civil engineer his value to the service depends on his training, fitness, and experience, which constantly increase irrespective of his rank, and are a measure of the compensation he should receive. In the case of the civil engineer corps and the corps of naval constructors their increase in value to the service from continued experience was undoubtedly the basis of their longevity pay tables, and their rank a less important matter, intended as a recognition of their service and a method by which it might be shown in a military establishment. As an extreme illustration of the matter it will be assumed that a line officer remained an ensign for thirty years; at some time during this period he would be a very excellent ensign, but at the end of the period he would be a poorer ensign than when he started, having passed his life in minor and subordinate duties. His contemporary, a civil engineer, would have performed all the duties of his grade, as they have no connection with his rank, and at the end of the thirty years would be a vastly better civil engineer than when he started.

11. It is not known to the civil engineer board whether the Personnel Board have recommended that the corps of naval constructors remain on their present longevity pay table, or whether they also be placed upon army pay. If the constructors corps is to be placed on army pay, then it might not be consistent to leave only one corps, the civil engineers, on a longevity basis, and great care and consideration would have to be used in changing the pay of both corps that injustice and injury might not be done them. If the constructors corps is to remain on a longevity basis of pay then the most serious consideration should be given to placing the civil engineer corps on the same basis, as the duties of these corps are of a highly technical and specialized nature, requiring a training which must be acquired outside the service.

12. The legislation during the past eight years affecting the line of the Navy has been to materially improve its conditions of rank,

advancement, and pay. It seems, in consequence, reasonable that legislation which will affect the civil engineer corps should be of the same nature and not the reverse, and it is hoped that the recommendations of the civil engineer board will have careful consideration before final action is taken.

13. In the absence of the other members of the civil engineer board, it becomes necessary for the second member of the board to submit this report alone.

Very respectfully,

A. C. CUNNINGHAM,
Civil Engineer, U. S. Navy, Member of Board.

The SECRETARY OF THE NAVY.

HEADQUARTERS U. S. MARINE CORPS,
Washington, D. C., November 17, 1906.

SIR: Referring to your communication of the 12th instant in which was inclosed a copy of that portion of the report of the Personnel Board, of which the honorable the Assistant Secretary of the Navy is president, which relates to the Marine Corps, for the consideration and comment of the subboard of the Corps, the following is respectfully submitted:

2. The recommendations contained in paragraphs 2 to 6, inclusive, of the report of the Newberry Board being based upon the suggestions of the undersigned, no comments thereon seem necessary.

3. The attention of the Department is invited to the recommendations made in paragraphs 13, 14, and 15 of the report of the undersigned, which it is believed contain suggestions of materiality to the corps, and which are not commented upon by the Newberry Board.

4. Paragraphs 3 to 10, inclusive, of the report of the undersigned seem to be covered by paragraph 1 of the Newberry Board's report, upon which latter paragraph the following comment appears pertinent: The undersigned being unacquainted with the scope of the report of the Newberry Board so far as pertains to the question of the increase of the enlisted force of the Navy, are unable to properly comment upon the suggestion of the Newberry Board to the effect that the question of the increase of the enlisted personnel of the Marine Corps is a matter of departmental policy and that no recommendation on their part is necessary. The undersigned, however, desire to place themselves on record as being perfectly satisfied in permitting this question to remain one for departmental action, especially in view of the fact that the records of the headquarters of the Marine Corps show that since 1896 the various increases in the enlisted personnel of the Marine Corps have been made by Congress as a result of departmental action. The records further disclose the fact that during said period the Department has, after full consideration of the requirements of the service, recommended to Congress increases in the enlisted personnel of the Marine Corps which have failed of legislation.

The undersigned believe, however, that so long as the Marine Corps is detached for service with the Navy, the increase of its enlisted personnel should go hand in hand with the increase of the enlisted personnel of the Navy, and that the proportion of said increase should be in accordance with the recommendation of the

General Board, to wit, 25 per cent thereof. As the Navy increases in matériel requiring increased personnel, the demands on the Marine Corps are proportionately increased, and the rule may therefore well be laid down that the increase of the personnel for the Navy and the Marine Corps should be contemporaneous. In this connection the Board deems it proper to bring to the Department's attention the fact that since 1900, as is shown by the records of the Department, the demands made by it upon the Corps have been, during said period, materially increased as to their scope, so that in considering the question of the enlisted personnel of the Marine Corps regard must be had, not only to the demands made upon it strictly for the naval service, but also to those which are constantly being made upon it for expeditionary forces, floating battalions, legation guards, battalions in Panama, and such cases as the present 1,000 men serving with the army of pacification in Cuba. That this view of the matter was fully considered by the Department is shown in the annual report of its present head to the President under date of December 4, 1905, in which he states under the caption "Marine Corps":

> In the estimtes submitted on behalf of the Department provision is asked for the increase of some twelve hundred officers and men in the personnel of the Marine Corps. This increase is, in the judgment of the Department, absolutely necessary for the efficient discharge of its duties. The sphere of its usefulness has greatly expanded during the past ten years, and although the Corps itself has been likewise increased it is barely strong enough for the work it has to do.

That the Department is still of this opinion is clearly shown by its approval of the estimates for the ensuing fiscal year submitted by the commandant of the Corps in which an increase of 2,000 enlisted men has received the Secretary's approval.

5. Referring to the recommendation of the board that for the enlisted force as at present authorized (8,771 men) the number, rank, and distribution of officers in grades, both in the line and staff, is adequate to the needs of the naval service the undersigned have none of the data, if any, upon which the Newberry Board based this recommendation. They are strongly of the opinion, however, that this recommendation is refuted by the actual figures which are herewith presented for the consideration of the Secretary.

The Marine Corps, from the date of its organization up to the present time, has always been a military body, and it is but fair, in considering the number of officers necessary to a proper carrying on of the duties devolving upon it, to compare the number of its officers with the number of officers allowed a similar organization in the Army. The act of February 2, 1901, commonly known as the army reorganization act, was placed upon the statute books after careful consideration of the then needs of the Army. By said act a regiment of infantry consists of 840 enlisted men, and to each regiment there is allowed the following quota of line officers: One colonel, 1 lieutenant-colonel, 3 majors, 15 captains, 15 first and 15 second lieutenants, making a total of 50 officers of the line to each regiment. The present authorized strength of the Marine Corps is therefore ten regiments, and by the act above referred to would be entitled to 500 officers of the line, whereas the register discloses the fact that there are at present only 256 line officers authorized by law. The Marine Corps, owing to the peculiar nature of the duties devolving upon it, that is the assignment of its men on board ships and in detachments on

shore smaller than a full company, requires even a larger number of officers than would be necessary for a military organization such as the Army, in which the smallest unit is the company. It must therefore be clear that, based upon the legislation now in force as well as the actual existing conditions, the Marine Corps should have more line officers than would be allowed the Army for a similar number of men, whereas as a matter of fact the Marine Corps has only one-half the number of line officers allowed the Army for a similar number of enlisted men.

6. With regard to the necessary number of line officers of the Marine Corps for the present requirements of the service, the undersigned have made a very careful analysis of the actual requirements and have assigned to the various shore stations the minimum number of officers deemed necessary to properly perform the required duty, and in so doing have not taken into consideration the fact that officers are sick, on leave, and on special duty, other than court-martial duty, and as a result thereof have to report that the minimum number of officers required for duty at shore stations, including recruiting, with the present enlisted personnel, is 209. There are at present 58 officers serving on board vessels in commission, and in case the ships which are now undergoing repairs and in ordinary, as well as those nearing completion, are placed in commission, there will be required for this duty 62 additional officers, making a total of 329 officers, exclusive of the officers necessary for expeditionary battalions and other special duty, which, as above stated, the Corps is continually being called upon to perform, and which would require quite a large number of officers. Furthermore, the attention of the Department is invited to the fact that with the exception of a few officers who are on sick leave, all officers of the Marine Corps are on active duty, it being impossible to grant extended leaves or to place any officers on waiting orders. And in addition thereto there are four officers on the retired list doing active duty.

7. Referring to so much of the board's report which states that in its opinion the present rank of the officers is adequate, the undersigned have the honor most strongly to differ with said recommendation, and as illustrative of the fact that at least the higher grades of the line of the Marine Corps need reorganizing, attention is invited to the fact that in the Navy there is one captain to each 528 men, while in the Marine Corps there is one colonel to each 1,461 men. In the Navy there is one commander to each 330 men, while in the Marine Corps there is one lieutenant-colonel to each 1,461. In the Navy there is one lieutenant-commander to each 187 men, while in the Marine Corps there is one major to each 584 men. In the Army [illegible] one colonel to each 840 men, while in the Marine Corps there [illegible] each 1,461 men. In the Army there is one lieutenant-colonel [illegible] 840 men, while in the Marine Corps there is one to each 1,461 [illegible] In the Army there is one major to each 280 men, while in the [illegible] Corps there is one major to each 584 men. The lower grades [illegible] Navy and Marine Corps are more closely assimilated. The [illegible] figures are given as illustrative of the fact that [illegible] grades of the Corps there are not sufficient officers of the [illegible] accord with the number of enlisted men allowed by [illegible] same argument as to the necessity of an increase in the number of officers, as well as the redistribution of the grades thereof,

applies with equal force to the staff of the Marine Corps as to the line.

8. The attention of the Department is also invited to the fact that increases in the enlisted force have been given the Corps, especially the increase made in 1905, in which 1,239 men were added to the Corps, without the increase of a single officer. The Department has placed itself on record in opposition to the recommendation of the Newberry board in respect to the present rank of the officers of the Corps, as will be seen from the following excerpt from the report of the Secretary of the Navy under date of December 4, 1905:

> It may be questioned whether the rank of the higher officers of this Corps, and more especially of the commandant, corresponds to the responsibility of their duties. The chiefs of bureaus being placed on the footing of rear-admirals, it would seem that the head of this branch of the organization may have some claim to a higher rank than that corresponding to commodore. I suggest, for the consideration of the appropriate committees of the Congress, the propriety and expediency of placing a major-general at the head of the Marine Corps, with an officer of the rank of the present commandant as his second in command.

9. The undersigned, in view of the foregoing, are constrained to differ with the recommendation of the Newberry board's report as contained in the last part of the first paragraph of said report, and have the honor to recommend the Department's disapproval thereof; and they are further of the opinion that the recommendations made by them in paragraphs 6 to 10, inclusive, of their report dated September 24, 1906, will, if adopted, not only conduce to the greater efficiency of the corps, but will furthermore only authorize such number of officers and enlisted men to the corps as will be necessary to meet the demands which will be made upon it; and it is therefore earnestly hoped that said suggestions will meet with the Department's favorable consideration.

Very respectfully,

G. F. ELLIOTT,
Brigadier-General Commandant.
C. H. LAUCHHEIMER,
Colonel, Adjutant, and Inspector.
J. E. MAHONEY,
Lieutenant-Colonel, U. S. Marine Corps.

The SECRETARY OF THE NAVY,
Washington, D. C.

BUREAU OF STEAM ENGINEERING,
Washington, D. C., January 7, 1907.

SIR: 1. Paragraph 23 of the report of the Board on Personnel, of which the Assistant Secretary of the Navy is president, reads as follows, viz:

> The board, while in favor of the amalgamation of the line and former engineer corps, as provided by the present personnel law, in a general sense, desires to express the opinion that experience shows that some specialization for the design and inspection of machinery should be created.

2. In the bill prepared in the Judge-Advocate-General's office, in accordance with the report of the Personnel Board, entitled "A bill to increase the efficiency of the personnel of the line of the Navy of

the United States," and submitted to the Congress in a special message by the President, and most forcefully indorsed by the Secretary of the Navy and by the President, occurs the following language:

> Officers who, under existing law, are now *or may become* eligible for engineering duty only shall be borne as additional to the numbers authorized in the several grades by this act.

(The underscoring is mine.)

3. The foregoing quotations indicate, apparently, that there is a belief in the Department that the Navy requires a body of engineering experts for the filling of the higher grades of that specialty, especially for duty on shore.

4. This question of engineering in the Navy is one of such vital importance that I would consider myself derelict in my duty as engineer in chief of the Navy did I not invite your serious consideration to it. In the bill just sent to the Congress to increase the efficiency of the personnel of the line of the Navy, with the exception of the quotation above and similar casual mention in one or two other places of officers eligible for engineering duty, no reference whatever is made as to the manner in which engineering specialization is to be obtained. From the title of the bill the Congress would be warranted in concluding that the measures mentioned were all that the line of the Navy requires to render it more efficient, whereas, in my opinion, the engineering question is of equal importance to that of the early attainment of command rank.

5. The engineering duty of the fleet—the duty on board ships in commission—is now being performed apparently to the satisfaction of commanding officers, and also to the satisfaction of the engineer in chief, but the care and manipulation of the machinery of our ships in commission is not the whole of marine engineering. The designing and construction of that machinery, its inspection while building, and its repair at navy-yards and stations require a more intimate knowledge of the profession than that possessed by the average line officer. In other words, there must be specialists in engineering to fill the higher positions on shore, and the necessity for such officers is acknowledged by all first-class naval powers.

6. Officers for the performance of this duty may be obtained in two ways: First, by the establishment of a small, nonseagoing corps of experts recruited from the engineering colleges of the country and, second, by permitting a limited number of officers of the line to specialize in engineering and, after attaining a certain rank, to perform that duty only—on shore only.

7. Progress in naval engineering has never been so rapid as at present. The steam turbine, the internal-combustion engine, the gas-producer plant, and other devices are all struggling toward perfection, and all striving to displace the reciprocating steam engine of today; and to keep in the forefront of this competition is the duty of the naval engineer. The machinery plant of a modern warship is an intricate aggregation of mechanism, the proper designing of which can be done only by the trained engineer with sea experience. There is no doubt that the civilian engineer can design marine machinery in so far as the size and dimensions of parts is concerned, but the installation of that machinery, as a whole, so that it will be

thoroughly efficient, that parts may be removed and replaced with the least displacement of contiguous machinery and with dispatch is the outcome of a knowledge gained by sea experience only.

8. In my opinion too much stress can not be laid upon the many advantages of all officers derived from a common entry—a common education, common interests, and the sea habit acquired at the same time with the habit of command and control of men, which is quickly absorbed by the receptive minds of the young, none of which advantages would be possessed by officers appointed from civil life and for shore duty only.

9. At the present time there are many officers in the line of the Navy who would willingly specialize in engineering, who really desire to do so, provided suitable provision were made by law to insure the future of such a career. In this connection it is worthy of note that in the bill referred to herein the contingency of a surplus of officers a few years hence is recognized and provision made for their discharge from the service. Would it not be much better to so utilize the services of officers that no discharge would be necessary, but that the education which they have received from the Government would be conserved to the Government and the authorization of another nonseagoing corps avoided?

10. In my report to the Secretary of the Navy for the year 1905 I suggested a plan, based upon the above, which appears to meet with the approval of the officers desiring to specialize in engineering, and which does not injure the prospects of others in any particular, and which, in my opinion, would give to the service a more efficient engineering personnel than by any other method.

11. None of the above suggestions conflicts with or even touches upon the cardinal features of the proposed measure, and they are in no sense a criticism of that measure. They are simply recommendations regarding another feature which might be incorporated in the bill in question with advantage to the service, the omission of which appears to be due to an oversight, for while the proposed bill provides for the retirement and the placing on the reserve list of officers for engineering duty only there is no provision for replacing these officers.

12. I desire also to invite your attention to one or two other matters in the bill:

First. In section 15 warrant machinists are not included in its provisions with boatswains and gunners, although the Department has already recommended that they be given chief rank, which, if done, will place them in the same anomalous condition.

Second. Throughout the bill the primary list of officers is called the seagoing list in contradistinction to the reserved list, although the former contains the names of the officers borne for engineering duty only on shore only, where they are properly borne, as no officer would apply for engineering specialization in case his name were immediately transferred to a list of officers of supposedly inferior ability. Some other designation than seagoing list would be all the change necessary, and it is suggested that "active list," as used on page 37 et seq., paragraphs numbered 1, 5, 28, and 30 of Document No. 142, would be more appropriate. This is also the designation used in the proposed bill (sec. 16) for amending section 1442 of the Revised Statutes, and by the Secretary of the Navy on pages 41 and 42 of Document No. 142, last paragraph but one in each case.

Third. The clause in section 17 which states that " * * * and all acts and parts of acts inconsistent with the provisions of this act are hereby repealed," apparently repeals the law that officers borne for engineering duty only, of and above the rank of commander, shall perform duty on shore only. Such was evidently not the intention of the framers of this bill, nor is it desirable.

Very respectfully,

C. W. RAE,
Enginer-in-Chief, U. S. Navy.

The ASSISTANT SECRETARY OF THE NAVY.

NAVY DEPARTMENT,
Washington, January 31, 1907.

SIR: A board is hereby appointed, consisting of yourself as senior member; Naval Constructor David W. Taylor, U. S. Navy; Chaplain Carroll Q. Wright, U. S. Navy; Pay Inspector John S. Carpenter, U. S. Navy, and Surg. William C. Braisted, U. S. Navy, as members, and Civil Engineer Frank T. Chambers, U. S. Navy, as member and recorder, to convene at the Navy Department, Washington, D. C., at 10 a. m., Tuesday, February 5, 1907, to consider and report upon what changes in legislation are necessary for the efficiency of the staff corps, bearing in mind the efficiency of the naval service and economy in public expenditures.

The board will also report what changes, if any, in the titles of staff officers are desirable.

The report, as far as possible, will be based upon the recommendations of the Newberry Personnel Board, and the various subboards of staff officers that reported through it; and should be submitted as soon as practicable.

It is the intention of the Department to draw up and submit to Congress a bill dealing with the staff corps, after due consideration of the recommendations of the board.

The members and recorder of the board have been directed to report to you at the time and place designated above, and you will proceed to Washington, D. C., and convene the board accordingly.

Upon the completion of this duty, return to Annapolis, Md., and resume your regular duties.

This is in addition to your present duties.

Respectfully,

V. H. METCALF,
Secretary.

Prof. of Mathematics PHILIP R. ALGER, U. S. Navy,
U. S. Naval Academy, Annapolis, Md.

NAVY DEPARTMENT,
Washington, D. C., February 8, 1907.

SIR: The board appointed by your order No. 1994–30, of January 31, 1907, to recommend what legislation is necessary to promote the efficiency of the staff personnel of the Navy, has the honor to submit the following report:

2. The board met, in pursuance of the Department's order, on February 5, 1907, at 10 o'clock a. m., all the members being present. The precept to the board, together with the Newberry Board's report, and the various staff subboard's reports were read and discussed. In view of the fact that there is now before Congress a bill (H. R., 24130), to increase the efficiency of the personnel of the line of the Navy, and as it is considered unnecessary to repeat certain provisions of that bill which are applicable to the staff, the board has formulated its recommendations in the shape of an amendment thereto.

3. The board has closely followed the recommendations of the Newberry Board, which in the main followed the reports of the subboards, in recommendations regarding the Medical and Pay corps. In the construction corps and the corps of civil engineers, promotion to the rank of commander after twenty years' actual service has been recommended. Without such a provision, placing these corps on the same pay basis with the rest of the Navy would work injustice to a considerable number of their members.

4. With regard to the corps of professors of mathematics, the board followed the recommendations of the Newberry Board, except that it proposes that the five junior members of that corps shall have the rank of "lieutenant commander" instead of "lieutenant or lieutenant commander" as now provided by law. It is thought that only persons of established reputation, and consequently of mature years, should be appointed to this corps, as has in fact almost universally been the case in the past, and that their age on appointment should be such as to warrant their being given the rank of lieutenant commander.

5. The board felt itself precluded, by recent legislation limiting the pay of chaplains to that of lieutenant commander, from recommending that their pay be the same as that of other officers of equal rank. It is recommended, however, that the same provision for promotion to the rank of "lieutenant commander" be applied to the chaplains' corps as is applied to other staff corps, namely, that this promotion shall be coincident with that of the line officer of the same date of precedence.

6. The board recommends that the pay of the professors of mathematics, naval constructors, and civil engineers be based upon that of the Army, thus putting them upon the same footing as regards pay as all other officers of the Navy and all officers of the Army, Marine Corps, and Revenue-Cutter Service.

7. The board, after careful consideration of the question of the titles of staff officers, concluded that the long established precedent in the Army had better be followed. The compound titles suggested by Lieutenant Commander Key are thought to be cumbersome, and objectionable upon other grounds, although the board approves the principle of including in each officer's title the name of his corps. It

is therefore recommended that the titles of staff officers consist of their military rank, followed in all cases by their corps designation.

8. The amendment proposed to H. R. 24130 is as follows:

Section 16, second line. Strike out the word "voluntary." Add the following:

Provided further, That officers of the corps of professors of mathematics, of the construction corps, and of the corps of civil engineers shall hereafter receive the same pay and allowances, except forage, as are or may be provided by or in pursuance of law for the officers of corresponding rank in the Army.

Section 17, line 13: Strike out the number of the section and substitute "27," placing the section to follow section 26.

SEC. 17. That from and after the passage of this act the present titles and grades of staff officers be and are hereby abolished. That all staff officers be recommissioned with the titles of their rank followed by their corps designation.

SEC. 18. That the Medical Corps of the Navy shall hereafter consist of three hundred and fifty officers, of whom twenty-four shall be captains, Medical Corps; twenty-four commanders, Medical Corps; and the remainder lieutenant-commanders, lieutenants, and lieutenants of the junior grade, Medical Corps. Appointees shall be commissioned as lieutenants of the junior grade, Medical Corps. After three years' service they shall be commissioned as lieutenants, Medical Corps, and shall be promoted to lieutenant-commanders, Medical Corps, with the officer of the Line of nearest but next above date of precedence. Promotion to commander and captain, Medical Corps, shall be made as vacancies occur: *Provided*, That no officer shall be appointed to or promoted in the Medical Corps until he shall have passed such examinations as the Secretary of the Navy shall prescribe.

The grade of chief pharmacist is hereby established and pharmacists shall be eligible for promotion to this grade after six years' service and after passing such examinations as the Secretary of the Navy may prescribe. The pay and allowances of pharmacists and of chief pharmacists shall be the same as are or may be provided for boatswains and chief boatswains.

SEC. 19. That the Pay Corps of the Navy shall hereafter consist of two hundred and fifty officers, of whom seventeen shall be captains, Pay Corps, seventeen commanders, Pay Corps, and the remainder lieutenant-commanders, lieutenants, lieutenants of the junior grade and acting ensigns, Pay Corps: *Provided*, That appointees shall be made acting ensigns, Pay Corps. No person shall be given an acting appointment who is under twenty-one or more than twenty-six years of age; the pay, allowances, and precedence while serving under acting appointments shall be the same as for officers regularly commissioned as ensigns, and an officer serving under an acting appointment may at any time be discharged by the Secretary of the Navy; all officers serving under acting appointments who fail to qualify for commissions shall be so discharged. After two years' probationary service acting ensigns, Pay Corps, shall be commissioned lieutenants of the junior grade, Pay Corps. After three years' service as such they shall be promoted to lieutenant, Pay Corps, and shall be promoted to lieutenant-commander, Pay Corps, with the officer of the Line of nearest but next above date of precedence. Promotion to commander and captain, Pay Corps, shall be made as vacancies occur. Every pay officer shall, before entering upon the duties of his office, give bond to the approval of the Secretary of the Navy, for the faithful performance thereof, in the following sums: Officers of and above the rank of lieutenant-commander, twenty-five thousand dollars; officers of the rank of lieutenant, fifteen thousand dollars; officers of the rank of lieutenant junior grade, and ensign, ten thousand dollars: *Provided further*, That no officer shall be appointed to or promoted in the Pay Corps until he shall have passed such examinations as the Secretary of the Navy shall prescribe. Vacancies occurring in the lowest grade of the Pay Corps in conformity with the foregoing provisions shall be declared to exist on the first day of each July, and not more than ten officers shall be appointed to the Pay Corps in any fiscal year to fill vacancies caused by the increase hereby authorized.

SEC. 20. That clerks to pay officers of the Navy appointed under existing law, shall be temporarily warranted, from time to time, upon nomination by officers of the Pay Corps of the Navy, and, during the period of their service, shall have the same pay and allowances as other warrant officers of corresponding length of

service; and that they may be retired, at the discretion of the President, under the provisions of this act, after thirty years' accumulated service, with three-quarters of the full pay of such warrant officers; provided, that no clerk shall be retired under the provisions of this act until he shall have attained the age of sixty-two years; and the period, or periods, during which he may be, or has been, awaiting assignment or appointment shall not be construed to count as service; that, upon completion of the duty of a pay officer, the warrant of his clerk shall be void; that, for the purpose of fixing rates of pay and computing length of service for retirement, all pay clerks shall be credited with previous service in the Navy or in the Army or Marine Corps; that, upon the passage of this act, clerks who have thirty years' accumulated service and who have reached the age of sixty-two years, may, upon their own application, be retired from active service as hereinbefore provided; that clerks serving under temporary warrants may be retired from active service for disabilities incurred in line of duty, as now provided by law for other warrant officers.

SEC. 21. That the corps of professors of mathematics shall hereafter consist of twelve officers, of whom three shall be captains, four commanders, and five lieutenant-commanders, corps of professors. Appointments shall be in accordance with existing law excepting that no person shall be appointed who is less than thirty or more than forty years of age: *Provided*, That no officer shall be promoted in the corps of professors of mathematics until he shall have passed such examinations as the Secretary of the Navy shall prescribe: *Provided*, That section fifteen hundred and twenty-eight, Revised Statutes, be and the same is hereby repealed.

SEC. 22. That the corps of naval chaplains shall hereafter consist of forty officers, who shall, before appointment or promotion, pass such examinations as the Secretary of the Navy shall prescribe. Chaplains shall serve three years with the rank of junior lieutenant and shall then be commissioned with the rank of lieutenant; promotion to the rank of lieutenant-commander shall be with the line officer of nearest but next above date of precedence.

SEC. 23. That the corps of naval constructors shall hereafter consist of seventy-five officers, of whom ten shall be captains, construction corps, and not less than ten commanders, construction corps, and the remainder lieutenant-commanders, lieutenants and lieutenants junior grade, construction corps; provided, that appointments to the corps shall be made as provided by existing law. Appointees to the corps shall be commissioned lieutenants of the junior grade, construction corps; after three years' service they shall be commissioned lieutenants, construction corps, and shall be promoted to lieutenant commanders, construction corps, with the officer of the line of the nearest but next above date of precedence. Promotion to commander, construction corps, shall be made after twenty years' service in the construction corps, or as vacancies occur. Promotion to captain, construction corps, shall be made as vacancies occur. No officer shall be appointed to, or promoted in, the construction corps until he shall have passed such examinations as the Secretary of the Navy shall prescribe.

SEC. 24. That the corps of civil engineers of the Navy shall hereafter consist of forty officers, of whom five shall be captains, corps of civil engineers, and not less than five commanders, corps of civil engineers, and the remainder lieutenant-commanders, lieutenants and lieutenants of the junior grade, corps of civil engineers, provided that appointments to the corps shall be made from graduates of the Naval Academy or from civil engineers from civil life. Appointees shall be commissioned lieutenants of the junior grade, corps of civil engineers; after three years' service they shall be commissioned lieutenants, corps of civil engineers, and shall then be promoted to lieutenant-commander, corps of civil engineers, with the officer of the line of the nearest but next above date of precedence. Promotion to commander, corps of civil engineers, shall be made after twenty years' service in the corps of civil engineers, or as vacancies occur. Promotion to captain, corps of civil engineers, shall be made as vacancies occur: *Provided*, That no officer shall be appointed to or promoted in the corps of civil engineers until he shall have passed such examinations as the Secretary of the Navy shall prescribe.

SEC. 25. That the pay and allowances of chiefs of Bureau of the Navy Department shall hereafter be the same as are or may be provided by or in pursuance of law for the senior nine rear-admirals of the Navy.

SEC. 26. That for each Staff Bureau of the Navy Department there shall be detailed from the same corps as the chief of the Bureau, an assistant to the chief of Bureau, who shall, during such detail, receive the highest pay and

allowances of his corps, and in case of the death, resignation, absence, or sickness of the chief of Bureau, shall, unless otherwise directed by the President, as provided by section one hundred and seventy-nine of the Revised Statutes, perform the duties of such chief of Bureau until his successor is appointed or such absence or sickness shall cease.

SEC. 27. That sections eight and nine of the act entitled "An act to reorganize and increase the efficiency of the personnel of the Navy and Marine Corps of the United States," approved March third, eighteen hundred and ninety-nine, and all acts and parts of acts inconsistent with the provisions of this act, are hereby repealed.

SEC. 28. That nothing contained in this act shall operate to abolish present credit of service for officers appointed from civil life, or to reduce the rank, pay, or allowances which, but for the passage of this act, would have been received by any officer now in the Navy, at the time of its passage or thereafter.

9. Copies of the following papers are hereto appended:

The precept to the board marked Appendix A.

The letter of the Department relative to titles, with copies of two letters therewith transmitted, marked Appendix B.

Very respectfully,

PHILIP R. ALGER,
Professor of Mathematics, U. S. Navy, President of Board.

D. W. TAYLOR,
Naval Constructor, U. S. Navy, Member.

J. L. CARPENTER,
Pay Inspector, U. S. Navy, Member.

C. Q. WRIGHT,
Chaplain, U. S. Navy, Member.

W. G. BRAISTED,
Surgeon, U. S. Navy, Member.

F. T. CHAMBERS,
Civil Engineer, U. S. Navy, Member and Recorder.

The SECRETARY OF THE NAVY.

I do not concur in that portion of the foregoing report which excepts the chaplains' corps from the general rule of being paid in accordance with their rank.

Very respectfully

C. Q. WRIGHT,
Chaplain, U. S. Navy, Member.

The SECRETARY OF THE NAVY.

APPENDIX B.

NAVY DEPARTMENT,
Washington, February 2, 1907.

SIR: The Department transmits herewith copies of letters bearing upon the subject of change of titles of staff officers of the Navy, for the information and guidance of the board of which you are senior member.

Respectfully,

V. H. METCALF,
Secretary.

Prof. of Mathematics PHILIP R. ALGER, U. S. Navy,
U. S. Naval Academy,
Annapolis, Md.

THE WHITE HOUSE,
Washington, January 12, 1907.

MY DEAR KEY: I think your suggestion admirable—that is, that we should have the titles appear as surgeon-admiral, surgeon-lieutenant, paymaster-captain, constructor-commander, and so forth. I have sent a copy of your letter and of this to the Department, to be read in connection with my letter to Secretary Bonaparte of November 28th.

Sincerely yours,

THEODORE ROOSEVELT.

Lieut. Commander A. L. KEY, U. S. Navy,
General Board, Mills Building, Washington.

DEPARTMENT OF THE NAVY,
GENERAL BOARD,
Washington, January 11, 1907.

MY DEAR MR. PRESIDENT: I have read with great interest your letter to Mr. Bonaparte, which I have the honor to herewith return.

I think the general feeling among the line officers of the Navy is in accord with the opinions you express with respect to line and staff titles. If the law could be so drawn that the title could not appear without the rank, or the rank appear without the title, there should not be—and I do not believe there would be—much opposition from line officers. If the corps designation appears with the rank, such as surgeon-admiral, surgeon-lieutenant, paymaster-captain, constructor-commander, etc., I think that such an arrangement, as long as the staff corps wish their titles to express their rank in the service, ought to be satisfactory all round. The inclosed leaf, cut from the register of the British Navy, shows that their engineer officers are given similar titles.

* * * * * * *

With great respect, I remain, sincerely yours,

A. L. KEY.

The PRESIDENT.

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O

60TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 132.

REPORT ON WORK OF BIOLOGICAL SURVEY.

MESSAGE

FROM THE

PRESIDENT OF THE UNITED STATES,

TRANSMITTING

THE REPORT OF THE SECRETARY OF AGRICULTURE ON THE WORK OF THE BIOLOGICAL SURVEY IN THE INTEREST OF AGRICULTURAL AND GAME PROTECTION.

DECEMBER 21, 1907.—Read; referred to the Committee on Agriculture and Forestry and ordered to be printed, with illustrations.

To the Senate and House of Representatives:

I transmit herewith the report of the Secretary of Agriculture on the work of the Biological Survey in the interest of agricultural and game protection, prepared in response to the requirements of a provision in the act making appropriations for the Department of Agriculture for the fiscal year ending June 30, 1908, together with an estimate of the Public Printer, as provided in Public Act No. 153, approved March 1, 1907, of the cost of printing the usual number of copies of the report, both with and without the accompanying illustrations.

THEODORE ROOSEVELT.

THE WHITE HOUSE,
December 21, 1907.

REPORT OF THE SECRETARY OF AGRICULTURE ON THE WORK OF THE BIOLOGICAL SURVEY.

To the Senate and House of Representatives of the United States of America in Congress assembled:

The act making appropriation for the Department of Agriculture for the fiscal year ending June 30, 1908, directs the Secretary of Agriculture "to investigate and report to the next session of Congress to what extent, if any, the work now being done by the Bureau

of Biological Survey is duplicated by any other Department of the Government, and to what extent the work of this Bureau is of practical value to the agricultural interests of the country." (Pub., No. 242, p. 21.)

In response to these inquiries I have the honor to report that no part of the work now being done by the Bureau of Biological Survey is duplicated by any other Department of the Government, and that the work of the Survey is of great practical value to the agricultural interests of the country.

Following is a report showing the objects, nature, and results of the investigations carried on by the Biological Survey.

Respectfully,

JAMES WILSON,
Secretary of Agriculture.

WORK OF THE BIOLOGICAL SURVEY IN THE INTERESTS OF AGRICULTURE AND GAME PROTECTION.

The several lines of investigation carried on by the Biological Survey are practical in character, and the information gathered is primarily for the aid and enlightenment of the farmer, the horticulturist, and the stockman, and of those concerned in the preservation of insectivorous birds and game and in the importation of foreign birds and animals. Incidental to the main purpose much of the information obtained is of scientific and educational value.

The work of the Survey is conducted along three lines: (1) Investigations of the economic relations of birds and mammals to agriculture; (2) supervision of matters relating to game preservation and protection and the importation of foreign birds and animals, and (3) investigations of the geographic distribution of animals and plants, including the preparation of maps showing the life and crop belts.

SUMMARY.

Following is a brief summary of the more important results obtained:

The Biological Survey has carefully studied the food habits of our native birds for the purpose of discriminating between beneficial and injurious kinds, and its publications on the subject are of great practical service to farmers and horticulturists, and are the acknowledged basis for legislation throughout the country.

It has shown that 43 species of birds destroy the cotton boll weevil in Texas, and is now urging that such of these as are not already protected by law be given special protection. Having discovered that swallows, among the most valuable of insect-eating birds, prey upon the boll weevil, especially during the fall migration, it has suggested methods by which the numbers of these birds breeding in the Northern States may be materially increased, with a view of assisting the northern farmer in warring upon his insect enemies and of aiding the southern planter in combating the weevil pest and other injurious insects. It has suggested methods also by which the number of

swallows breeding in the Southern States may be increased and their range greatly extended over the cotton-producing area.

It has made special investigations of the relations of birds to the fruit industry of California, and has issued bulletins on the subject for the information and guidance of the orchardists and horticulturists of that State.

It has studied the relations of woodpeckers to practical forestry and has successfully advocated their protection on the ground that our forests would perish from the attacks of insects save for the intervention of these useful birds.

It has shown that cuckoos and orioles are the most important of all birds in destroying caterpillars, which, but for their work, would strip half the foliage from our fruit and shade trees every year; and these birds are now everywhere protected.

It has demonstrated the value of the mockingbird and the cardinal as destroyers of noxious insects and weeds, has cooperated with local authorities in securing protection for these birds in every State where they occur, and has put a stop to their wholesale trapping and shipment to foreign countries.

It has demonstrated the value of the robin as an insect destroyer, and through cooperation with local authorities has put a stop to the sale of the bird from the markets north of the Ohio and Potomac, and has restricted interstate commerce in it from States in the South.

It has investigated the problem of the English sparrow and has suggested practical means of checking the further increase of the pest.

It has ascertained that certain birds, as our native sparrows and bobwhite, feed largely upon the seeds of weeds, and has urged the protection of these as invaluable aids to the farmer in his perennial warfare against weeds. It is estimated that the services of our native sparrows in destroying weeds save the farmers of the country at least $35,000,000 annually.

It has shown that the old prejudice against hawks and owls is unfounded, and that as a class these birds are most useful to the farmer, preying upon the small mammals that feed upon crops, fruit trees, and nursery stock. This information has resulted in the repeal of nearly all acts offering State bounties for these birds. One species, Swainson hawk, has been shown by its destruction of grasshoppers alone to save Western farmers more than $57,600 during the grasshopper season.

It has pointed out that scale insects, among the worst foes of the horticulturist, and until recently supposed to be exempt from the attacks of birds, are eaten by no fewer than 57 species, and are the favorite food of the grosbeaks and several other kinds of birds. This information is most important and timely, for without it protection might be withheld from certain birds most assiduous in their attacks upon scales, because of minor injuries they inflict on crops; while, as a matter of fact, the demonstrated value to the farmer of their services as destroyers of scale insects vastly overbalances the harm they do.

It has made evident the urgent need of State and Federal legislation for the purpose of staying the threatened extinction of several species and the rapid depletion of all our water fowl. It has care-

fully studied, and issued a bulletin upon, the food, routes of migration, and pairing time of waterfowl with reference to legislation for protecting them and fixing proper open seasons.

It has advocated the systematic planting of berry-bearing trees and shrubs about farmhouses and orchards for the double purpose of diverting destructive species from cultivated fruit and of attracting desirable birds and increasing their numbers by supplying additional food. Lists of such shrubs have been furnished to many inquirers in different parts of the country.

It has shown the farmer how the returns received from the sale of quail may be increased from 10 cents a piece for dead birds to nearly $1 a piece for live birds for propagating purposes.

It has shown how the full benefits of game protection may be obtained, and how the game in each State may be made to yield an important annual revenue which has already reached $40,000 in Kansas, $50,000 in Missouri, and $125,000 in Illinois.

It has advocated and aided in securing the establishment of 13 bird refuges located in six States.

It has cooperated with the local authorities in every State of the Union, more particularly with those of Alabama, California, Illinois, Indiana, Iowa, Massachusetts, Minnesota, Missouri, North Carolina, North Dakota, Oklahoma, Pennsylvania, Texas, and Wisconsin. Speaking of this cooperation, the game commissioner of North Carolina says:

> We have received aid in a host of ways which it was absolutely impossible to receive from any other Department in Washington. As a result of the information gathered by the Biological Survey on the habits of wild birds, I and those associated with me were able to secure a State law protecting the valuable nongame birds at all times of the year. * * * But for the active assistance rendered we should have had no warden force or State game commission work in this State.

It has advocated and secured the passage of an amendment of the law whereby eggs of game birds are now admitted from foreign countries for propagation under regulations prescribed by the Secretary of Agriculture. Under this amendment 12,700 eggs have been imported since 1902. In 1906 the State of Illinois was enabled to import 5,000 eggs of pheasants, and from these eggs reared 3,000 birds which were distributed among the citizens of that State.

It has successfully prevented the introduction of the kohlmeise, a bird which is very destructive to fruit in certain parts of Europe, the introduction of which, through misapprehension, was advocated in the apple-growing districts of the Pacific coast and the Northwest, where it might have done enormous damage.

It has maintained strict supervision over the importation of the Java sparrow, the Madagascar weaver, and other birds which have proved injurious in foreign countries, and has prevented them from securing a footing in the United States, where they would be likely to prove as baneful as the English sparrow.

It has prevented the introduction of the mongoose from foreign countries and from the Territories of Hawaii and Porto Rico. It located every individual in the country at the time of the passage of the law and, so far as known, has caused to be destroyed every one brought to this country since 1900.

It has experimented with and recommended practical methods of eradicating rodent mammals, such as rats, mice, rabbits, gophers, ground squirrels, and prairie dogs, by the use of poisons, traps, and gases, thus saving the farmers of the country many times the entire cost of the Survey.

It has suggested practical methods of destroying wolves and coyotes in the West and of fencing stock against them, by the application of which methods stock raisers may be saved at least $2,000,000 each year.

Learning that in some of the Western States thousands of dollars worth of strychnine are used annually for the destruction of wolves and the smaller rodents and that excessive doses are the rule, it has experimented to determine the minimum fatal dose for various kinds of noxious mammals. The result will be a saving of thousands of dollars annually to the Western farmers and stockmen.

It has studied the geographic distribution of our native animals and plants and mapped the natural life belts and areas, thus showing the agriculturist where particular crops can be successfully cultivated.

DETAILED STATEMENT OF PRACTICAL WORK.

ECONOMIC ORNITHOLOGY.

The work in economic ornithology began July 1, 1885. From the first the investigations were of a practical kind, relating to the value of birds to agriculture, and were designed to yield a full equivalent for the necessary expenditure of time and money.

Up to this time comparatively little had been done in the United States in determining the economic status of our birds and mammals, and knowledge of the food habits even of our commoner species was meager. In the case of birds classed as insect eating, exact information was wanting as to the extent of their insectivorous habits, the particular kind of insects eaten, and especially whether the insects eaten are beneficial or harmful to agriculture.

Second only in importance to this part of the work was the study of the seed-eating birds. The main purpose of this study was to ascertain the relative extent to which certain kinds feed on valuable grain, when this is included in their diet, and on the seeds of noxious weeds, since only by means of this knowledge can they be classed as beneficial or injurious to agriculture.

Of less importance when the Survey was begun, but of growing importance to-day, is the study of birds which in part depend for their subsistence on wild berries and fruit. When berries and orchard fruit are cultivated on a large scale, some birds, though not all, forsake their natural food in favor of the jucier and more accessible cultivated kinds, much to the prejudice of the orchardist and farmer. Hence the importance of the study of these birds for the purpose of determining the extent of the injury done to cultivated fruit by the fruit-eating birds, of learning how far such injury is atoned for by the destruction of harmful insects, and of devising methods of protecting the fruit.

Our birds may be arranged in three groups with reference to their economic relations to man as follows: (*a*) Wholly benefi-

cial; (*b*) partly beneficial and partly injurious; (*c*) wholly injurious.

(*a*) It may surprise many to learn that, strictly speaking, not one of our birds can be assigned to the first class—that of wholly beneficial kinds—since, however much good it may do in the long run, every insectivorous bird destroys a certain number of useful insects, and every seed-eating or fruit-eating bird eats more or less cultivated grain or fruit. Yet so slight is the damage done by many species and so vastly do the benefits conferred by them outweigh the injuries they inflict that whole groups of birds, such as swallows, flycatchers, warblers, and many of the sparrow tribe, may safely, though not with absolute accuracy, be classed as wholly beneficial.

(*b*) The second class, comprising the partly beneficial and partly injurious kinds, includes the great bulk of our American birds. Some do much harm, others very little; some are so beneficial that the harm they do is hardly to be reckoned; while the good and evil acts of a certain small number are so evenly balanced that it is difficult to decide their exact place in relation to the farmer or whether they should be praised or blamed.

(*c*) It is surprising also to note how few birds are properly to be classed as wholly injurious. With the exception of the three species of bird-eating hawks—the goshawk, the Cooper, and the sharp-shinned hawk—probably not another American bird deserves to be absolutely banned. Certain kinds, indeed—like the great-horned owl, rice bird, crow, blue jay, and some of the blackbirds—do so much injury, either in certain regions or at certain seasons, that here and there they deserve the title "mainly injurious;" but all of them, taking the year round, have redeeming features and atone, either wholly or in part, for the harm they do.

The accurate determination of the food habits of our birds and the assignment of the several species to their proper classes, according as they are beneficial or injurious, was from the outset a fundamental part of the work of the economic branch of the Survey.

Early in the history of the Survey it was perceived that field observations alone, though made with all the accuracy possible, were inadequate to supply the information wanted, and that only by careful examination of the contents of crops and stomachs of birds could final and accurate results be reached. To obtain the necessary stomachs without undue sacrifice of bird life arrangements were made with collectors in various parts of the country to secure the stomachs of birds killed for scientific purposes. Thus have been utilized a vast number of specimens which otherwise would have been wasted, so far as the economic relations of birds to the farmer are concerned, while at the same time much valuable information has been obtained with a minimum sacrifice of bird life. The material so obtained, supplemented when necessary by special collections made by members of the Survey during field service, has formed the basis of this branch of economic work. Up to the present time more than 75,000 stomachs have been secured from various sources. Of these 40,000 have been examined and the data so obtained have been tabulated, while 35,000 remain to be studied.

Thus is being gathered, as rapidly as possible with the limited means at disposal, a mass of practical information good for all time to come. When the work is once done, and the economic status of a

bird for a given region is once fixed by stomach examination, the work need never be repeated. To provide for the settling of any questions that may arise in the future as to the accuracy of the results obtained and published, the stomachs with their contents are carefully labeled and preserved as vouchers for the work, so that they may be reexamined at any time.

Prof. S. A. Forbes, director of the Illinois State laboratory and professor of zoology in the University of Illinois, an acknowledged authority on the subject of the food of birds, says of these investigations:

> The work done by the Biological Survey on the food of birds has never been equalled anywhere in the world. It is a laborious, tedious, and highly difficult study, absolutely indispensable, however, to any real knowledge of the values of birds to agriculture and horticulture. * * * No other work of the kind is being done anywhere on this continent, and we are entirely dependent, consequently, upon the product of this Bureau for our knowledge of its subjects.

The practical value of such investigations to the farmer and fruit grower is apparent. As year by year the value of farm and orchard products increases so must the value of birds as conservators of the farmers' interests increase. The need of legislative enactments in favor of insectivorous birds and of their strict enforcement was never so great as now, and it is probable that protective laws will be still more important in the future.

While laws if rigidly enforced may be expected to materially aid in the protection of birds, their effectiveness may be vastly enhanced by educational means, especially through education of the children, the farmers and legislators of the future. Children should be taught not only to refrain from overt acts against birds, from killing them and robbing their nests, but should be encouraged, through a knowledge of their value and the function they perform, to take active part in protecting them and in encouraging their presence in our midst. As will be dwelt upon in another place, it is gratifying to note that teachers are awakening to the importance of the subject, and that special bulletins and circulars of the Survey, setting forth the nature and extent of the services of birds and the best means of attracting them about houses and of increasing their numbers, are being extensively applied for and used in the schools.

So far bird-protective legislation, except as regards game birds, has been left wholly to the several States. Unfortunately, comparatively little has been done to harmonize State legislation, and too often State laws reflect local conditions and prejudices, and are ill adapted to the needs and circumstances outside of the particular State in which passed. Thus a bird in one State during its nesting period may be decidedly beneficial, and hence be included in the protected class, while in another State during its migration it may be decidedly injurious and hence be exempt from protection. Such facts, which bear upon the interstate relations of birds, should at least be fully known and carefully considered by legislators before framing laws. Decisions as to the economic status of birds should not be based wholly upon local conditions, but should rest upon the fullest obtainable information. For it must be remembered that the relation of a given species to the country as a whole may be such as to overshadow its local status.

Thus the need of consistent legislation for the protection of birds in the several States must become more and more urgent as time goes on, and without full and accurate data such legislation can have no sound and enduring basis. To supply such information is one of the important duties of the Biological Survey.

As a result of its investigations up to the present time 30 bulletins, in addition to Farmers' Bulletins, Yearbook articles, and circulars, have been published—and others are ready for the press—treating in a practical way of the food habits and economic relations of a large number of our common birds and mammals. The widespread interest in the subject may be inferred from the demand for the bulletins, which in the case of one (Some Common Birds in Their Relation to Agriculture) has already necessitated the distribution of more than 400,000 copies. Agricultural newspapers and journals also have given wide currency to the work of the Survey by publishing copious extracts in the interests of agriculture and game protection.

Passing from general considerations to the results of study of special groups, the following work of the Survey may be mentioned as of particular importance:

Birds that eat the boll weevil.—For three years special attention has been paid to a study of the birds that destroy the boll weevil. Forty-three species have been found to eat this pest, of which number seven kinds are especially important, particularly the swallows, orioles, and night hawks. Legislation in the cotton-growing States for the special protection of the birds that destroy the weevil is being urged by the Bureau, and three bulletins for the general information of cotton growers have been published and distributed in the cotton-producing States. Practical methods of increasing the numbers of certain birds of special value in destroying boll weevils are being recommended.

Protection of orchards.—Similar investigations have been made in the orchards of California and elsewhere for the purpose of suggesting methods of lessening the loss of fruit by the depredations of fruit-eating birds and of attracting and increasing the numbers of the species that feed upon insects injurious to fruit. A bulletin on the subject has already been published.

Woodpeckers as conservators of forests.—Woodpeckers are among the most useful of American birds, and it is believed that without them our forests could not exist. Specially equipped for the work nature designed them to do, they dig into trees and extract the eggs and larvæ of wood-borers which other birds can not reach. Certain species are very fond of ants, particularly the kinds that injure trees. Correct information on the subject is all the more important since one species, the golden-winged woodpecker, is often killed for food or on account of its beautiful plumage; and the injury to the bark of fruit trees inflicted by the sapsucker has been erroneously ascribed to others of the group. A few species also render themselves obnoxious at times by destroying fruits and nuts. Hence in the past the whole tribe has often been banned and made to suffer for the fault of two or three species. Knowledge of the important service done by woodpeckers in the interests of forestry has been widely disseminated in publications of the Bureau, and as a result the true

economic status of the birds is now generally recognized, and they are protected.

Economic value of cuckoos and orioles.—Special investigations as to the birds that are of service in destroying caterpillars show that cuckoos and orioles eat these insects to the extent of at least half their food. The remains of 250 caterpillars have been found in the stomach of a single cuckoo. It is not an exaggeration to state that but for the services of cuckoos and orioles half the foliage of our trees would be stripped by caterpillars each year. Wide publicity has been given to the facts in a bulletin and these birds are now everywhere protected.

Grosbeaks.—This is a small group of birds the study of which is important, since they feed upon the Colorado potato beetle, the scale insects, and other destructive forms. Scales are among the most dangerous foes of the horticulturist, and until recently they have been supposed to be almost exempt from the attacks of birds. No fewer than 57 species, however, have been found to feed upon them, some of which appear to make them a favorite article of diet. A report on the subject has been printed in which the attention of orchardists and foresters is called to the birds most efficient in waging war on these pests, that such birds may be protected and their numbers increased in every way possible.

English sparrow.—Under the present system of inspection of importations of birds, as conducted by the Survey, the introduction of this pest into the United States would have been impossible. Introduced about 1850, the sparrow is now so widespread over our country and so numerous that its extermination is impracticable because of the enormous cost. Its numbers, however, may be kept down and the extent of damage done by it greatly reduced by proper repressive measures. These are set forth in detail in publications of the Survey, while information as to the methods of reducing their numbers in special cases is being sent out in answer to numerous inquiries.

Relation of American sparrows to agriculture.—Our native sparrows are the most abundant and widely distributed of our small birds. A thorough investigation of their food habits has shown that next to the woodpeckers the group is more valuable economically than any other, chiefly from their wholesale destruction of the seeds of weeds. Some idea of the value of their services appears from the fact that a single individual of one species, the tree sparrow, by no means exceptionally fond of seed, is estimated to eat at least a quarter of an ounce of weed seed daily. Upon this basis the tree sparrows in the State of Iowa alone destroy annually about 875 tons of weed seed. The total value of the principal field crops of the country for the year 1906 was about $3,500,000,000, and estimating that the combined work of the sparrow tribe in destroying weed seeds results in an annual saving of only 1 per cent of the value of the crops—a low estimate—the sum total saved to the farmer in 1906 was $35,000,000. Furthermore, sparrows destroy many insects injurious to vegetation, particularly when feeding their young. A summary of the facts bearing upon the economic relations of sparrows has been published, and laws for the protection of these useful birds are now in force in nearly every State.

Bobwhite.—A careful study of the food of the eastern quail, or bobwhite, has been made to determine the value of the bird to the

farmer, aside from its value for food and sport. It has been found that every bobwhite eats on the average an ounce of food per day, 50 per cent of which is weed seeds and 15 per cent insects. In a year this amounts to about 11 pounds of weed seed and 3 pounds of insects.

A conservative estimate of the number of quails in Virginia in 1903 is 169,800, which, on the above basis, consumed in that year 9,678 tons of weed seeds and 171 tons of insects. The annual crop loss in the United States due to insects has been estimated by the Bureau of Entomology as about $500,000,000. Warfare against weeds forms a large part of the cost of crop raising. The direct benefit that accrues to the farmer from the consumption of insects and weed seeds by the bobwhite is thus apparent. Two or three bevies of bobwhites on the farm prevent the growth of weeds, the uprooting of which would require the services of several men for many days. If the efforts of the Survey for the better protection of bobwhite result in an increase in Virginia of only one-fourth the number in the State in 1903 it would mean a decrease on the farms of the State of about 2,400 tons of weed seeds and 42 tons of insects. As weeds have been estimated to damage crop land to the extent of $1 per acre, and as the crop lands of the United States are estimated to be 840,000,000 acres, it is hard to overestimate the value to the farmer of the services of such birds as the bobwhite.

Economic value of hawks and owls.—The Biological Survey has shown that the old prejudice against hawks and owls is not only unfounded but that these birds as a class are most useful aids to the farmer in destroying the hordes of small mammals that prey upon crops, fruit trees, and nursery stock. The slaughter of hawks and owls by the thoughtless in consequence of State bounties for their heads has resulted in great diminution of their numbers, and is one of the chief reasons for the undue increase of noxious mammals, which form their natural food. One of the first bulletins published by the Biological Survey was on this subject. The practical results that have been attained by the publication of the Bureau's investigations are the withdrawal of all State and of most county bounties on birds of prey, a growing appreciation of their services, and an increasing disposition to protect them.

With reference to work in this field, Prof. W. T. Hornaday, director of the New York Zoological Park, states:

> It is out of the question for me to point out in detail the innumerable instances to my knowledge of the great service that has been rendered to the agricultural interests of this country by the Biological Survey. The study of the food of hawks and owls, and of a great number of other birds, has been worth to the farming interests of this country ten times more than the entire cost of the Biological Survey up to date. Previous to the investigations of Doctor Fisher and other ornithologists of the Biological Survey into the food habits of our birds the value, or lack of value, to the farmer of the species reported upon was based upon nothing else than guesswork. The work of the Biological Survey has brought forth, for the benefit of all, the exact facts, and they have been published so widely that their practical value to the farmers and horticulturists is now entirely beyond question.

As evidence of the importance of information as to the relation of birds and animals to agriculture the so-called "scalp act," passed by the legislature of Pennsylvania in 1885, may be cited. This act provided a bounty of 50 cents each on hawks, owls, weasels, and minks killed within the State limits and a fee of 20 cents to the

notary or justice taking the affidavit. As a result of this act about $90,000 were paid in bounties during the year and a half subsequent to the passage of the act. This amount represents the destruction of at least 128,571 of the above-mentioned animals, most of which were hawks and owls. Estimating that 5,000 chickens are annually killed in Pennsylvania by hawks and owls and that their value is 25 cents each (a liberal estimate in view of the fact that a large proportion of them are killed when very young) the total loss of poultry in a year and a half would be about $1,875. It thus appears that $90,000 were paid by the State of Pennsylvania to save its farmers a loss of less than $2,000. But this estimate by no means represents the actual loss to the farmer and taxpayer of the State. It is safe to say that every hawk and owl yearly destroys at least 1,000 mice, or their equivalent in insects, and that each mouse or its equivalent so destroyed would cause the farmer a loss of 2 cents per annum. Thus the lowest possible estimate of value to the farmer of each hawk and owl would be $20 a year. The actual loss to the State therefore by the destruction of 128,571 of its winged benefactors in a year and a half was about $3,850,000. Even these figures, enormous as they are, do not represent the entire loss to the State, since the destruction of such a vast number of predaceous birds and animals is sure to be followed by a corresponding increase in the number of mice and insects, their natural prey, and years must elapse before the balance of nature thus destroyed is restored.

As a specific illustration of the extent and nature of the services rendered by a particular bird of prey to the farmer the case of the Swainson hawk may be cited. After the breeding season this hawk collects in large flocks on the western plains and feeds almost exclusively on grasshoppers and crickets. The stomachs of several of these hawks shot in August in northern Oregon from a flock of about 200 birds contained approximately 100 grasshoppers each, representing the morning meal. On a basis of two meals a day the daily ration for each hawk would be 200 grasshoppers, and the daily catch of the flock, 40,000.

On the above basis the total number eaten by a pair of hawks in a month is 1,200, which would weigh about 26 pounds. Assuming that in the area (1,500,000 square miles) inhabited commonly by the Swainson hawk in the United States, 10 square miles is the habitat of one pair of birds, a total of about 1,950 tons of grasshoppers is destroyed each month. The quantity of food eaten daily by a grasshopper is about equal to its own weight. Hence the value of the produce saved to the farmer by the destruction of the above enormous mass of insects, estimated at $10 per ton, amounts to about $19,500 monthly, or about $58,500 for the three months when the hawks are most actively engaged in hunting grasshoppers. Since this hawk eats other large insects, is an indefatigable mouser, and destroys many other small rodents, as gophers and ground squirrels, we shall be well within the mark if we estimate the value of its services for the remaining nine months as double that for the three grasshopper months, or about $117,000. Thus the total saving to the farmer and stockman effected by Swainson hawks for one year is $175,500. This is the record, be it remembered, for a single species of hawk, by no means the most numerous or most useful of our American hawks. The importance of the services of hawks in abating the grasshopper

pest is all the greater since the game birds which formerly assisted in destroying them—such as the wild turkey, prairie chicken, grouse, and quail—have been greatly reduced in numbers and in places approach extermination.

On a subsequent page are given details of the threatened destruction, in the State of Nevada, of some thousands of acres of alfalfa by meadow mice. The Bureau assistant who is investigating the matter reports that many birds, especially gulls, hawks, and owls, have been attracted to the spot by the unwonted abundance of their favorite food, and are now destroying thousands of the pests. This striking object lesson of the usefulness of birds of prey has not been lost on the local ranchmen, who are now carefully protecting all the useful species.

Means of attracting birds.—An important phase of bird increase and protection is the planting of berry-bearing trees and shrubs about homes and orchards. An increased food supply naturally tends to an increased number of birds, and the planting about orchards and gardens of berry-bearing shrubs—important as bird food—makes directly for the protection of valuable fruit. There are many such trees and shrubs the fruit of which is preferred by our native birds to the larger cultivated kinds, and they derive added value from their ornamental character. The subject is receiving much attention, and lists of trees valuable for food have been supplied to various inquirers.

Food and migration of wild ducks.—The value of wild ducks for food is very great, and the diminution of their numbers is a source of apprehension in the several States in which they breed or which they visit in migration. The food of wild ducks and the routes and times of their migration have been investigated with a view to definite State and Federal legislation for fixing a proper open season. The matter is of importance, since in their spring and fall flights ducks visit many States, and consistent State legislation is necessary to the preservation of some of the more useful species, which are fast being exterminated. A recent bulletin on the subject has been sent to game associations and other applicants who are concerned in a practical way in the preservation of our water birds.

General recognition of relation of birds to agriculture.—Throughout Europe it has long been recognized that an intimate relation exists between birds and agriculture, and in 1868 the German Society of Farmers and Foresters, alarmed at the growing losses from insect pests resulting from the destruction of birds, suggested the urgent necessity of an international agreement for the protection of birds of value to agriculture and forestry. But it was not until 1895 that, after various futile attempts, an effective international conference actually took place. In that year a convention on bird protection, called by the French Government, was held in Paris, and was attended by official delegates from Germany, Austria-Hungary, Belgium, Spain, France, Great Britain, Greece, Italy, Luxemburg, Monaca, Holland, Portugal, Russia, Sweden, Norway, and Switzerland.

In view of the importance of birds to agriculture, the convention unanimously urged the protection of beneficial species, but disagreed as to which species were beneficial and which injurious, the members expressing "absolutely opposite opinions concerning the usefulness

and noxiousness of the various species." The disagreement was attributed to "the want of biological research"—in other words, to lack of accurate knowledge as to the food of birds.

Thus the stumbling block to full agreement in the European convention was the absence of information as to what birds do and do not eat—precisely the kind of information the Biological Survey is furnishing the farmers of the United States, and which, when the work is completed, will definitely fix the economic status of all our American birds.

ECONOMIC MAMMALOGY.

Mammels in their relation to the farmer, like birds, are of three classes: (*a*) Wholly beneficial; (*b*) partly beneficial and partly injurious; (*c*) wholly injurious.

It is unfortunate that the group of mammals directly and wholly beneficial to the farmer is comparatively small, and that the damage done by the noxious kinds is much greater and much more in evidence than the good done by the beneficial. Nevertheless, certain mammals accomplish much good, and would accomplish much more, were they not persecuted and their numbers reduced by the thoughtless and the ignorant, who seem to labor under the mistaken impression that all mammals were created for no other purpose than to be killed. Skunks, armadillos, moles, shrews, bats, weasels, and badgers are good examples of mammals which, in their relation to agriculture, are almost wholly beneficial, the four former because they live chiefly upon insects, the weasel because it lives chiefly upon mice, the badger because it is the determined and persistent enemy of prairie dogs, ground squirrels, gophers, and other burrowing rodents. The importance of the badger, for instance, to the ranchman in regions infested by prairie dogs or gophers is very great, $10 being a low estimate of the value of each adult animal to the State; and yet the badger, expressly designed by nature for digging out and destroying these troublesome mammals, has been almost exterminated over much of the region where it formerly abounded, for no better reason than that it furnishes an excellent mark for the rifle or revolver. Prairie dogs, gophers, and other small rodents, thus freed from their worst enemy, increase at an alarming rate, to the detriment of the individual farmer and the aggregate loss of thousands of dollars to the State.

Foxes are largely insectivorous and eat many crickets and grasshoppers; they eat also many mice and rabbits, and the damage they do to small game and poultry has been greatly exaggerated. The killing of poultry by foxes, skunks, and weasels is almost always the work of a single individual which has acquired the poultry habit. When this individual has been shot or trapped the loss of poultry ceases, although numbers of the same species may live on the farm or make nightly visits to the farm buildings. The Survey takes every opportunity to make known the services of these and other useful mammals with a view to the education of the public as to their utility, to the end that they may be protected. Such mammals as porcupines, coyotes, and wolves are mainly injurious. Porcupines are strictly vegetarian and, feeding largely on the bark of trees and shrubs, in certain localities do great damage. Both coyotes and

wolves in the West aid greatly in keeping within safe limits the numbers of rabbits and some of the small rodents, but while thus of direct service to the farmer they are even more directly injurious to the stockman and besides destroy much wild game. On the whole they are decidedly obnoxious.

The third class, the members of which are practically wholly injurious, is large, and includes most of the small rodents, such as house rats, meadow mice, gophers, prairie dogs, ground squirrels, rabbits, and others. These collectively form an aggressive army, destructive at all times, and, on occasions and over large areas, multiplying until their depredations assume almost the proportions of a public calamity.

PREVENTIVE MEASURES AGAINST MAMMALS.

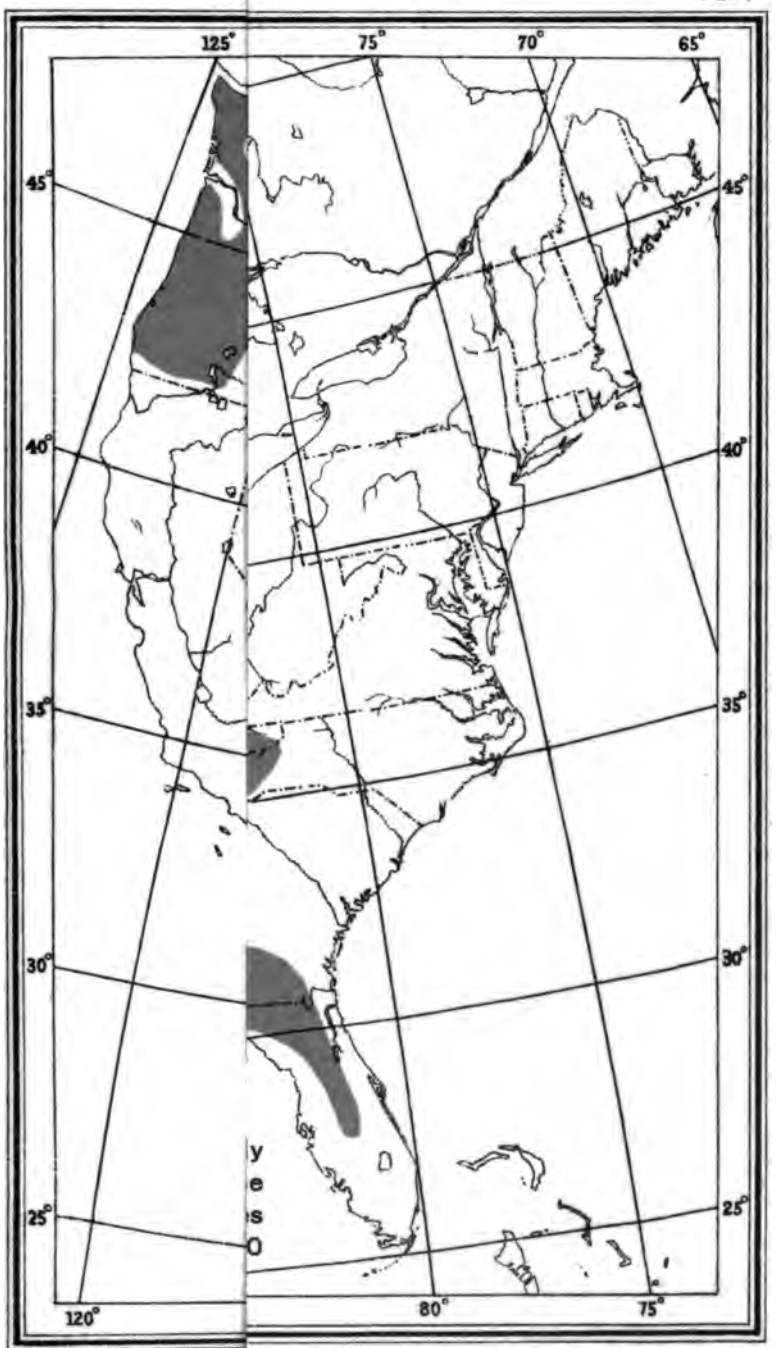
Experiments for the destruction of injurious mammals by means of traps and poisons have long been in progress, and practical instructions for their efficient use have been widely disseminated. The methods recommended for the destruction of these pests have saved our ranchmen and farmers many times the cost of maintaining the Bureau. The extent of the injury to crops throughout the United States by mammals, especially small rodents, can hardly be estimated, and the Survey is constantly in receipt of letters from all parts of the country asking for directions for exterminating certain pests, or limiting their ravages, so that profitable agriculture may be possible. Grain fields are devastated, orchards and pastures are ruined, and crop raising is made impossible in certain districts by hordes of small mammals.

A comparatively new and promising field of experiment is the use of bacterial diseases for the destruction of rodents—nature's own method of reducing the number of mammals when they become overabundant. Experiments are now being tried to destroy by this means the ground squirrels of Oregon, Washington, and Idaho, which cause an annual loss to the wheat crop of several millions of dollars. It is believed that by a comparatively small outlay fatal diseases may be introduced among these and other noxious mammals and their numbers so reduced as to render them practically harmless to farming interests.

While much has been accomplished toward a solution of the many practical problems relating to American mammals, much also remains to be done, especially in the discovery of cheaper methods of destroying pests, whether by means of traps, poison, gases, or other devices.

Wolves and coyotes.—In the western part of the United States wolves and coyotes levy a heavy tax on stock, especially colts, calves, and sheep—a loss aggregating several millions of dollars annually.

At the request of the Forest Service, the Biological Survey undertook a special investigation of the wolf problem. It was found that in early spring the breeding dens of wolves may be located and the young destroyed at small expense. The application of this discovery, in connection with experiments with scent baits for adult wolves and certain other information obtained in previous field work, has already resulted in a saving of stock worth upward of a million dollars. Four bulletins and circulars containing directions for the destruction


125°
75°
70°
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120°
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75°

of wolves and coyotes and directions for the construction of coyote-proof fences have been already issued and distributed among the ranchmen of the West.

House rats.—Of all our rodents house rats are the most destructive, and the losses occasioned by them may exceed those resulting from all other wild mammals combined. Since the comparatively recent discovery that rats are active agents in carrying and disseminating the germs of plague, the importance of the discovery of effective methods of destroying these pests is vastly increased. Experiments with bacterial diseases are now in progress with the end in view of discovering a disease that will insure the destruction of these rodents on a large scale and which may be used in towns and cities as well as in rural districts. Meanwhile experiments have been made with various traps and poisons, with the result that fairly effective means of checking the increase of the pests have been found. These methods have been set forth in a farmer's bulletin for the information of the public, and if generally adopted must result in the saving to the country of thousands of dollars annually.

Field mice.—Field mice, when excessively numerous, are very destructive to crops and may even ruin the agricultural output over large areas. A striking illustration is the recent appearance of these pests in vast numbers in the Humboldt Valley of Nevada. The manager of a large alfalfa ranch at Lovelocks, applying to the Biological Survey for assistance, under date of October 11, 1907, states:

> There are 50,000 acres of alfalfa in this section and the mice can be found on every acre. The alfalfa crop this year has been cut short one-third, and it is only a matter of time when the mice will take the entire valley.

The loss thus far he estimated at $50,000, and added that other crops also, such as potatoes and fruit trees, had been seriously damaged by these pests.

Immediately on learning of this outbreak the Biological Survey sent an expert to investigate it. He reports that the matter is even worse than stated and that the mice now average 8,000 to the acre. The ground is honeycombed by their burrows, which are so close together that the mounds of earth thrown out overlap, giving the fields the appearance of plowed ground. One hundred and sixty-one burrows were counted on a square rod, and this number was found to hold over thousands of acres. Not only has one-third of the season's crop of alfalfa been destroyed, but the fall pasturage has been practically ruined. And next year's losses will be even greater, for the mice are eating the roots as well as the tops, so that many of the fields will have to be plowed up and reseeded—in fact, in the case of some of the ruined fields the plowing has already been done.

The full significance of this alarming invasion becomes evident when it is understood that the valley in question is a part of the Truckee-Carson irrigation district in which the Government is spending $9,000,000 for the purpose of bringing water to irrigate a tract of about 400,000 acres of extremely fertile land. The records and maps of the Biological Survey show that the particular species responsible for the damage near Lovelocks is so distributed over the entire Truckee-Carson irrigation district that unless prompt measures are taken to diminish its numbers every acre of reclaimed land brought under cultivation will be in danger of attack. It is gratifying, how-

ever, to be able to state that the preliminary work already done by the Survey gives promise that the pest will be brought under complete control.

Prairie dogs.—Prairie dogs infest most of the open plains country of the United States from the Canadian boundary south into Mexico, and from approximately the one hundredth meridian to the foothills of the Rocky Mountains, and also a considerable part of the plateau country farther west. Their "towns" occupy immense areas of grazing lands, on which the animals destroy fully 50 per cent of the pasturage. The annual rental value of this land for grazing purposes is from 8 to 15 cents per acre. At an average damage of 5 cents per acre, the loss would amount to $1,500,000 per year. Growing crops are damaged to such an extent that agriculture is almost impossible on infested lands. The total annual loss they inflict amounts to upward of $2,000,000. The Biological Survey has aided the settlers of the West to fight these pests along the lines adopted successfully in the State of Kansas, where they were destroyed on about 2,000,000 acres at a cost, including labor, of about $100,000, or 5 cents per acre.

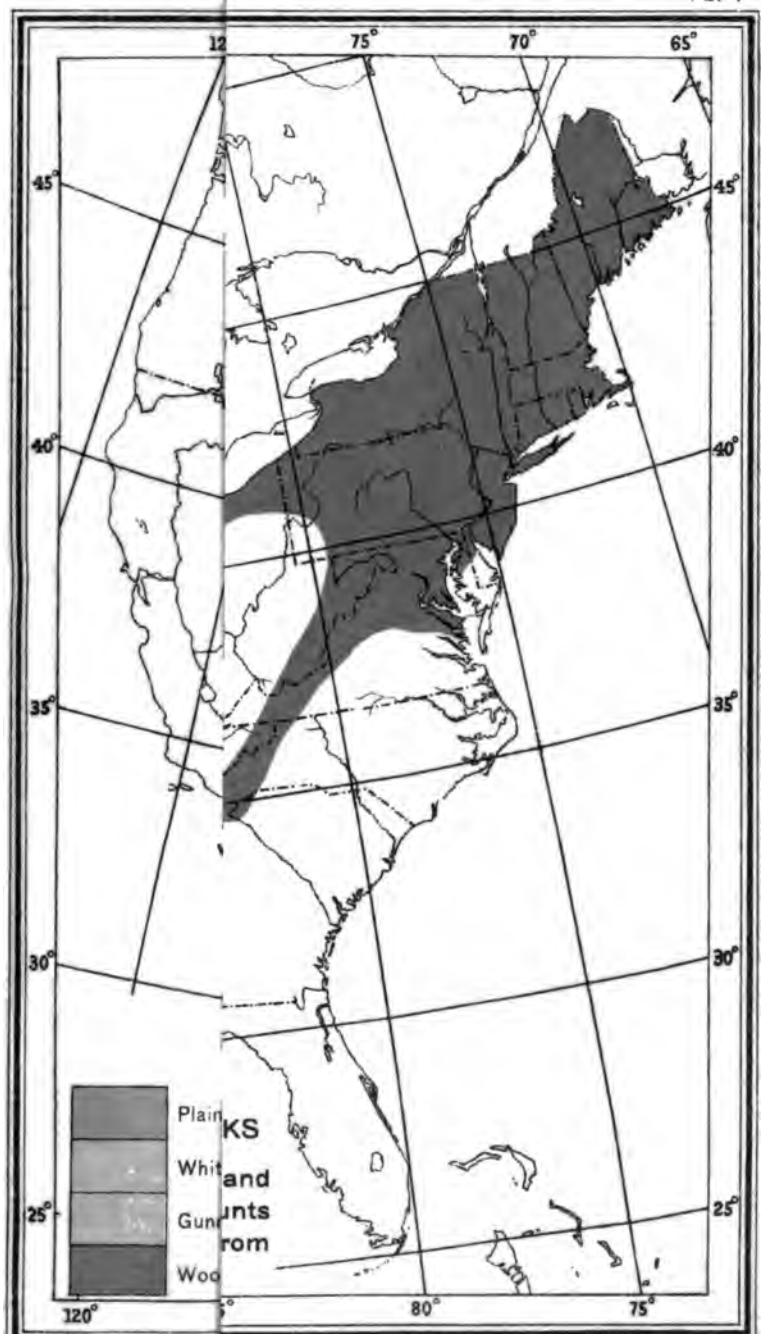
Ground squirrels.—Throughout most of the western half of the United States the plains and fertile valleys are infested by one or more species of ground squirrels, which inflict serious damage upon grain and forage crops. These animals are especially troublesome in Washington, Oregon, Idaho, Nevada, Utah, Wyoming, and California, and to a less extent in States farther east. The annual damage they inflict on crops is estimated at nearly $10,000,000, and nearly half a million is expended each year in fighting them. In Washington alone, where the cost of fighting ground squirrels last year was more than $165,000, the annual loss from their depredations amounts to three quarters of a million dollars. In California the losses from their depredations, though less than formerly, are believed to be fully as great as in Washington. In most of the region occupied the losses, unless checked by persistent effort, increase from year to year, as the area under cultivation increases.

If, as now suspected, the California ground squirrel, like the house rat, is an active agent in the dissemination of plague (by means of the fleas it harbors) its practical extermination, always important, becomes imperative.

A report on the depredations of ground squirrels in the Mississippi Valley has been published, and investigations now in progress will treat of the more destructive species farther west, and will contain the results of careful experiments as to the best methods of poisoning, trapping, and other means of destruction.

Pocket gophers.—Pocket gophers infest all the States and Territories west of the Mississippi River and also parts of Illinois, Wisconsin, Florida, Georgia, and Alabama. They live in burrows in rich alluvial and sandy soils, doing serious damage to crops, and also drive their tunnels through dikes and levees, letting out the water and entailing heavy expenditures for repairs.[a] They are particu-

[a] In the case of the Government ditch at Fallon, Nev., the damage by gophers is estimated by the engineer in charge as varying from $2,000 to $5,000 a year.



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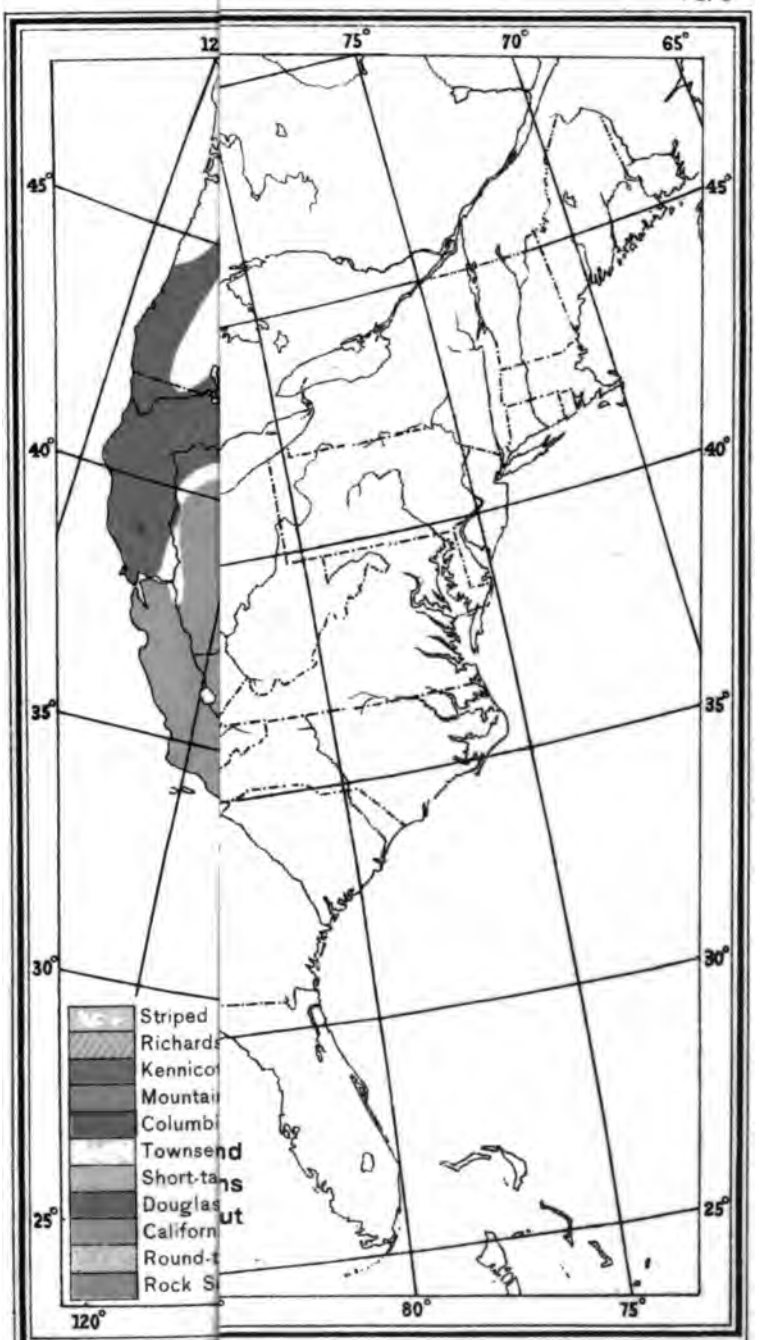

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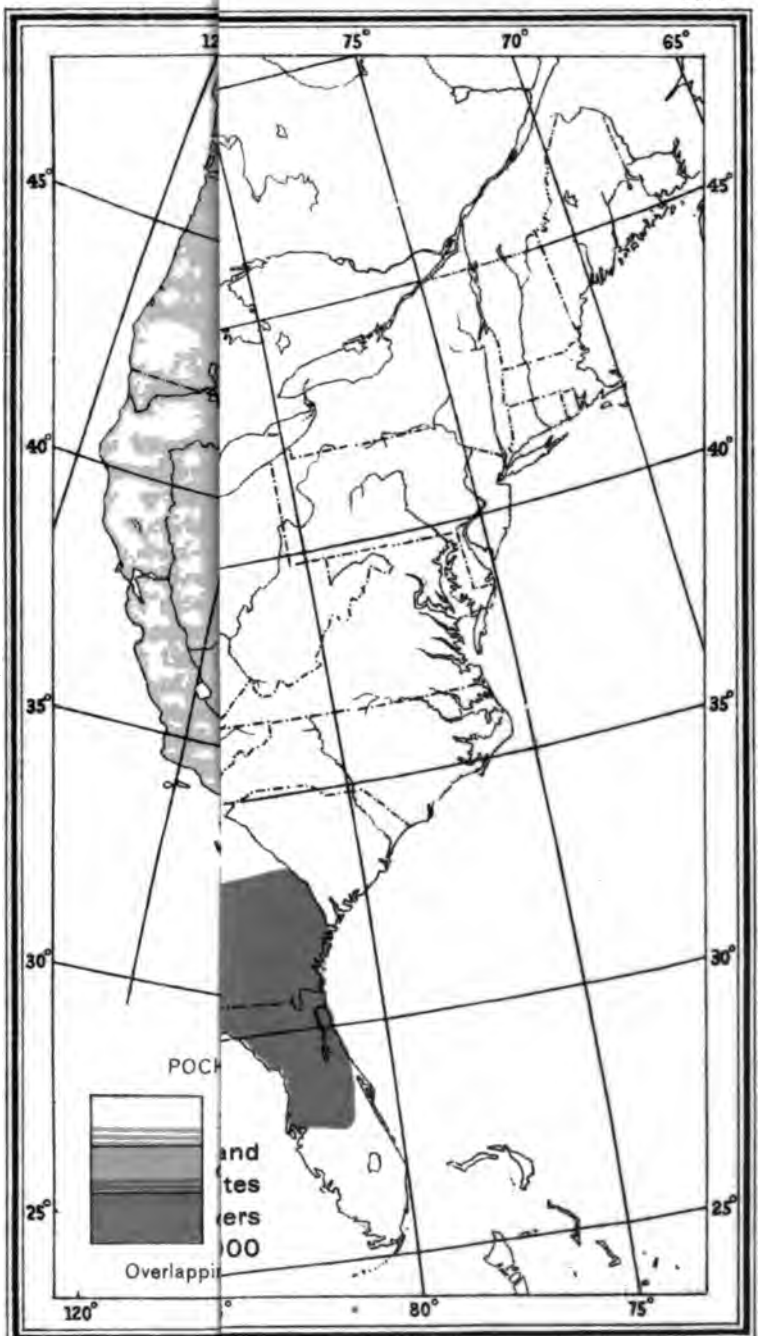
QUIRRELS



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larly destructive to alfalfa, clover, fruit trees, and garden crops; and the mounds they throw up not only bury valuable vegetation but also cause loss by preventing close mowing and by damaging farm machinery. The actual destruction of hay in fields where gopher mounds abound is estimated at one-tenth of the crop, and the area badly infested by the animals is so vast that the total losses are enormous, amounting probably to about $10,000,000 a year, besides the destruction of trees and garden crops. In the State of Kansas the loss on alfalfa alone is more than $600,000 a year, and fully as much more on hay and other crops. A bounty of 10 cents apiece is paid for gophers in Kansas and several other States. The Biological Survey has carefully investigated the habits of the animals, and has recently distributed a circular detailing the best methods of destroying them.

LOSSES DUE TO NOXIOUS MAMMALS IN THE UNITED STATES.

Accurate knowledge of the total money value of crops and live stock destroyed by noxious mammals in the United States is wanting. The following estimates are based on damage ascertained to have been done in certain areas. In every instance, however, the figures given are conservative, and understate, rather than overstate, the actual facts. Bearing in mind that the value of all kinds of live stock in the United States is constantly increasing, that the acreage under wheat, corn, fruits, and other farm products also is augmenting, and that the rapidly growing population requires an ever-increasing amount of domestic products and merchandise—subject to the attacks of mammal pests—the figures are useful as affording an idea of the enormous money values involved, and of the nature of some of the problems with which the Survey is now dealing.

LOSSES CAUSED BY CARNIVOROUS MAMMALS.

A prominent stockman of Wyoming estimates the losses from predatory animals in that State at $1,000,000 a year. This is about 3 per cent of the total value of the stock of the State. Assuming that the percentage of loss in other States infested by wolves, coyotes, and cougars ranges from one-tenth of 1 per cent of the value of the stock to 2 per cent (the estimate being made from known conditions) the annual losses aggregate as follows:

Range cattle	$5,889,000	
Horses and mules	1,636,000	
Sheep	4,152,000	
Hogs	584,000	
Goats	83,000	
		$12,344,000
Poultry—by coyotes, wildcats, foxes, minks, weasels, etc		1,500,000
Total		13,844,000

This estimate does not include the loss of game animals by carnivorous mammals, which aggregate several million dollars yearly.

B. LOSSES CAUSED BY RODENTS.

I. European rats and house mice, including the brown rat, the house mouse, and the roof rats:

Damage to grains while growing and in shock, stack, bin, crib, etc., up to December 1 each year, 1 per cent of value	$21,079,000
Damage to grains kept on the farm after December 1 for feed, seed, increase of price, etc., 1 per cent	11,692,500
Damage to grains held in elevators, mills, warehouses, and in transportation on cars, ships, etc., 2½ per cent	4,282,500
Damage to grain fed (largely in cities) to horses, hogs, poultry, etc., and entirely outside of farms and ranches	3,763,000
Damage to merchandise other than grains—dry goods, furs, meats, vegetables in stores and markets	10,000,000
Loss on young poultry, eggs, marketed (1 per cent of value)	4,100,000
Fire losses due to rats and mice (one-fifteenth of $15,000,000)[a]	1,000,000
	55,917,000

This estimate of damage by rats is small in comparison with the estimates made in Denmark and France. Denmark, about half the size of South Carolina, estimates the annual loss by rats at $3,000,000. France in 1904 estimated the annual loss from rats and mice in that country at $40,000,000. The London Times (June 15, 1907) states that the annual loss due to rats in Great Britain is £10,000,000 ($48,500,000). The United States, not including Alaska, has 35 times the area of Great Britain, 15 times the area of France, and 200 times the area of Denmark.

II. Losses due to other rodents:

1. Pocket gophers—		
Damage to alfalfa	$4,000,000	
Damage to native hay	2,500,000	
Damage to clover and tame grass	3,000,000	
Damage to orchard and other trees	1,750,000	
Damage to gardens and crops not included above	575,000	
Damage to mowing machinery	800,000	
		$12,625,000
2. Ground squirrels [*Citellus*, etc.], annual loss		10,000,000
3. Rabbits—		
Loss to nurseries	1,200,000	
Loss to orchards	3,600,000	
Loss to forest, gardens, melons, etc	800,000	
Loss to pastures, stacks	400,000	
		6,000,000
4. Prairie dogs [*Cynomys*]—		
Damage to pastures	1,500,000	
Damage to grain, forage, and other crops	500,000	
		2,000,000
5. Meadow mice—		
Damage to trees	1,800,000	
Damage to grain, alfalfa, hay, etc	1,250,000	
Damage to melons, gardens, etc	250,000	
		3,300,000
6. Woodchucks (damage to clover and hay and to haying machinery)		800,000
7. Cotton rats [*Sigmodon*]		800,000
8. Muskrats (damage to canals, embankments, etc.)		700,000
9. Other native rodents—wood rats, kangaroo rats, white-footed mice, etc		1,250,000
Total		37,475,000

[a] The underwriters place the losses due to defective wiring for electric lighting at $15,000,000 per annum, a large part of which they attribute to gnawing of the wires by rats and mice.

SUMMARY.

Losses from carnivorous mammals	$13,844,000
Losses from European rats and mice	55,917,000
Losses from other rodents	37,475,000
Cost of poisons, traps, fumigators, ammunition, bounties, and labor to fight the above [a]	3,000,000
Total	110,236,000

GAME PROTECTION.

One of the important duties of the Biological Survey is to prevent the introduction into this country of foreign animals and birds which might become destructive pests. This requires a system of inspection at various ports of entry, for doubtful consignments of live animals are not allowed to enter without official permits. Thus the mongoose, that ever-threatening menace to our Southern States, has been kept out; likewise the fruit-eating bats and certain birds which, like the English sparrow and the house rats and mice, if once acclimated, are sure to do enormous damage to agricultural interests.

During the year 1906, 708 mammals, 408,582 birds, and 5,910 eggs of game birds were brought into the United States under Department permits.

Incidentally to the main purpose of the supervision of importations, valuable statistics have been gathered and published concerning the trade in cage birds in the United States.

Interstate commerce in game.—Congress has prohibited shipments from one State to another of game killed in violation of local law, and has committed to this Department the work of carrying the act into effect. In a number of instances the hides and heads of game animals killed in violation of this law and shipped into other States have been intercepted through the efforts of this Bureau and the offenders brought to trial and convicted in the Federal courts. Through cooperation with the Department of Justice and with local officials this traffic has been greatly restricted.

Cooperation with the States.—Whenever possible, organizations and individuals in all parts of the country have been assisted in their efforts to establish or maintain adequate protection of their game. The information possessed by the Survey has been disseminated by means of publications, correspondence, and, in cases of special importance, by personal conferences in response to requests from legislatures, legislative committees, and State officials and organizations.

It has been one of the objects of the Biological Survey to demonstrate how the game of the State may be developed as an important resource and made to maintain an adequate system of game protection without cost to the taxpayers. The influence of the Bureau's publications on this subject has been manifested by a marked increase in State legislation along the lines recommended. Thus at the next legislative session after the publication of a bulletin setting forth the advantages of nonresident, resident, and alien hunting lincenses, 5 States established nonresident licenses, 4 established resident licenses, and 4 established alien licenses. Nine States

[a] The cost of fighting ground squirrels in the State of Washington alone in the year 1907 was about $162,500.

have now placed their warden service on a self-sustaining basis through a system of hunting licenses. As examples of the successful working of this system it may be mentioned that in 1905 Minnesota raised $20,000, Kansas $42,000, Missouri nearly $50,000, Wisconsin $88,000, and Illinois $128,000, in each case without any direct appropriation from the State.

Information.—Information concerning game and suggestions for its protection are carefully collected from all sources and promptly made available to persons interested. During the past year the number of copies of publications on game and game laws issued by the Biological Survey was 51,600. The number of citizens of the United States who hunt is conservatively estimated as between two and a half and three millions, and many of these apply directly to the Department for information regarding game laws, importation of game birds, and administration of the laws, and questions of all kinds relating to game protection.

Protection of game in Alaska.—The game law of Alaska, the enforcement of which is intrusted to the Biological Survey, has proved unsatisfactory in many particulars, and probably will soon be replaced by a better one. By means of the present law, however, through the hearty cooperation of the customs service of the Treasury Department, the Survey has succeeded in abolishing the trade in hides and horns, which threatened to seriously diminish the numbers of certain species of big game.

Bird reservations.—During the past four years 13 reservations containing large colonies of interesting and valuable birds have been established in Florida, Louisiana, Michigan, North Dakota, and Washington, and placed directly under the charge of this Bureau. All these reservations are especially adapted for breeding grounds, from which the birds, as they increase in numbers, overflow and stock adjacent regions. Without the protection and careful supervision constantly given these refuges the birds on them would soon be exterminated.

GEOGRAPHIC DISTRIBUTION.

That a direct relation exists between the plant and animal life of a region and its agricultural possibilities has long been known. Cultivated plants are only wild species, the desirable qualities of which have been accentuated by care and breeding. If left to themselves, they would either perish by competition with hardier species or revert to the original wild stock from which derived. Thus the relation between wild and cultivated plants is very close, and it is to be inferred naturally that where a wild plant of a particular kind grows and thrives certain of its cultivated relatives likewise can be made to thrive.

It requires only a moment's consideration to discover that neither wild plants nor wild animals are distributed haphazard over the earth, but that they are limited by well-defined natural laws of temperature and moisture. So constant are the relations between the wild life of a district and its climate and other conditions, summed up under the word "environment," that a study of the plants and animals of a region affords a good idea of the prevailing climatic conditions. By a study of the distribution of wild plants and animals it is practicable to divide the country into belts, called life

zones, each characterized by certain climatic conditions and by certain plants and animals. To render this knowledge available for practical purposes is a short and easy step. If, for example, we find that on a certain mountain slope or in a certain valley a particular crop is successful, it is necessary only to discover valleys or mountain sides in neighboring States, inhabited by the same native plants, animals, and birds, when, soil and other local conditions being similar, we may be sure that the same crop will thrive there. This is the underlying principle of crop and zone work, and in order to define the several crop zones all that is essential is an intimate acquaintance with the distribution of the plant and animal life of the country.

Some years ago, when the Department of Agriculture, in connection with its annual distribution of seeds, attempted to define the areas fitted for the various crops, it became evident that existing knowledge of the subject was altogether too vague and indefinite for practical use. Owing to lack of the necessary information many thousands of dollars were wasted in ill-advised attempts to make crops grow in regions by nature unfitted for them. Perceiving the importance of the subject, the Biological Survey undertook the systematic collection of data necessary to establish and map the number of life and crop zones of the country and to define the limits of each.

Perhaps no part of the work intrusted to the Survey is of greater utility to the practical, progressive farmer than this. The life zones once ascertained and mapped, a comparatively small number of experiments in each are sufficient to determine what crops are available for its several parts. As each zone or belt includes thousands of square miles, the saving to the farmer by rendering unnecessary new experiments as new lands are utilized is very great. Even a general knowledge of what to plant in a given locality and what not to plant is of great service to the practical farmer; but it has been found possible to go much further and after careful study to indicate not only the general agricultural possibilities of a region, but to furnish lists of the special kinds of grain, vegetables, and fruits best adapted to it. Such knowledge of the special agricultural capabilities of a region is serviceable not only to resident farmers who desire to utilize their farm land to the best advantage, but to others, especially newcomers to the country, who, having grown certain crops elsewhere, desire to find land and climate best adapted to the same or similar crops.

The definition of the several life and crop zones of the United States, as stated above, has been made possible only by careful and painstaking study of the plant and animal life which characterize them. Although this study was undertaken primarily as a means of crop determination, the results are of much importance independent of their application to the practical ends of agriculture. They are of especial value for educational purposes, as appears by the large and constantly growing demand from colleges, schools, and experiment stations for the publications in which this information appears.

Thus far the Survey has published five editions of maps showing the location and boundaries of these belts, and has published also lists of the varieties of cereals, fruits, and other crops adapted to each. But their importance as a guide to crop planting and for educational purposes is not the only use for the zone maps, for it appears that noxious insects in their spread over the country are restricted

to the same belts, and that this is true also of certain diseases of stock and even of man. Recently it has been shown that yellow fever in the United States is limited to a transcontinental belt the boundaries of which were laid down on a map published by the Biological Survey eighteen years ago.

The life zones as defined by the Biological Survey have been adopted by the zoologists and botanists of America and are now generally accepted. The maps have been republished by some of the Agricultural Experiment Stations and also by authors of text-books on physical geography. They have been found helpful, also, in several of the bureaus of the Department of Agriculture—particularly the Bureaus of Forestry, Statistics, Plant Industry, and Entomology. In the Bureau of Plant Industry they serve as a guide to the introduction of plants and seeds. Outside of the Department of Agriculture they are used by the Census Bureau and Reclamation Service.

INTERRELATION OF THE THREE BRANCHES OF THE SURVEY.

As stated at the beginning, the work of the Biological Survey consists of three main branches: (*a*) Economic inevstigations of birds and mammals; (*b*) preservation of birds and game; (*c*) geographic distribution of species.

While each of these branches is distinct, each supplements the others and the work on geographic distribution is a necessary foundation for the work along the other lines.

I. The value of investigations of the economic relations of birds and mammals to agriculture depends largely upon a knowledge of the distribution and relative abundance of the several species, for while the food habits of a bird or mammal may be ascertained to be beneficial or injurious, the practical significance of this information to agriculture depends on where the species lives, and in what numbers. Thus the study of the food habits of blackbirds has shown that grain constitutes 70 per cent of the food of the California bicolor blackbird and only 14 per cent of the food of the redwing blackbird, but the fact that the former is not abundant or widely distributed and occupies a region in which grain growing is of minor importance, while the redwing occurs in immense flocks in the grain-growing parts of the United States, shows that the bicolor species, though it might become a dangerous pest if allowed to increase unduly, is not, under present conditions, a menace to grain growing, while in certain localities the redwing, owing to its abundance, is a serious foe and should not be protected. This and many other examples that might be cited show how interwoven are the questions of protection, distribution, and food habits.

II. The preservation of its game and of its nongame birds is in the hands of each State, but the cooperation of the Biological Survey is frequently sought by State legislatures and State game associations, not only because of the general grasp of game conditions throughout the country possessed by the Survey, but because of its knowledge of the distribution and abundance of game and game birds and of the economic status of beneficial and injurious species—knowledge derived through all three of its functions. This fact is so all recognized that nearly all the bird-protective measures in force

throughout the Union are based on investigations made by the Biological Survey.

In the enforcement of the Lacey Act, which prohibits interstate commerce in game, a knowledge of the distribution and abundance of the various kinds of game and game birds is essential.

In regulating importations of foreign birds and mammals, knowledge of the economic status of birds and mammals in this and other countries is necessary for intelligent discrimination. In fact, it was information derived through study of the economic relations of birds and mammals that gave rise to the recommendation of the Department which led Congress to pass the law establishing supervision of importations.

III. The study of the distribution and abundance of animal and plant life is not, of course, dependent upon protective measures or economic investigations; but, as has been shown, it is the fundamental basis on which their effectiveness rests. Without accurate and comprehensive knowledge of the various species, of the areas they inhabit, and of their relative abundance intelligent game and bird protection, discriminating regulation of importations, and satisfactory economic study of birds and mammals would be impossible. No work of this character is being done, or has ever been done, by any other Department of the Government.

In securing this information it has been found essential to ascertain with exactness what species are comprised in certain perplexing groups of birds and mammals. The facts thus determined, besides serving their necessary purpose as a fundamental basis for the work of the three branches of the Survey, have incidentally proved an important addition to knowledge of the natural history of the United States.

PUBLICATIONS.

Since 1885, the year when the Survey was begun, its publications have been numerous and have covered a wide range of subjects. Its bulletins and other classes of publications contain more than 7,000 pages of printed matter and many illustrations. From the first the demand for them has been large, and of some it has been found necessary to issue repeated editions, while in most cases the demand has far exceeded the supply. In addition to calls from the classes of readers for whom they were primarily intended—farmers, horticulturists, importers, game wardens, and sportsmen—they have been widely used in colleges, normal and other schools, and experiment stations. A large proportion of the recently published text-books of zoology in use by high schools and colleges contain liberal extracts from the reports of the Survey. It is not easy to understand how publications based upon investigations primarily undertaken for the benefit of the public can be made to serve a higher function than the education of the young—the future citizens of the Republic. Even now requests for copies for educational purposes consume a considerable proportion of every issue, and these requests are becoming so frequent that in the near future special provision must be made in order to meet them.

The publications of the Bureau may be classed under five heads: Bulletins, Faunas, Circulars, Farmers' Bulletins, Yearbook articles.

1. *Bulletins.* In these are presented subjects that have a direct economic bearing, relating particularly to the farm and orchard. These are intended for distribution among farmers, orchardists, and stockmen. They vary much in size, but generally include such subjects as require too much space for treatment in circulars or Farmers' Bulletins.

LIST OF BULLETINS.

No. 1. The English Sparrow (*Passer domesticus*) in North America, Especially in its Relations to Agriculture. Prepared under the direction of C. Hart Merriam by Walter B. Barrows. Pp. 405, figs. 10, map. 1889. Price 25 cents.

No. 2. Report on Bird Migration in the Mississippi Valley in the Years 1884 and 1885. By W. W. Cooke. Edited and revised by C. Hart Merriam. Pp. 313, map. 1888. [Out of print.]

No. 3. The Hawks and Owls of the United States in Their Relations to Agriculture. By A. K. Fisher. Pp. 210, pls. 26. 1893. [Replaced by Circular No. 61.]

No. 4. The Prairie Ground Squirrels or Spermophiles of the Mississippi Valley. By Vernon Bailey. Pp. 69, pls. 3, maps 4. 1893. [Out of print.]

No. 5. The Pocket Gophers of the United States. Prepared under the direction of C. Hart Merriam by Vernon Bailey. Pp. 47, pls. 2, figs. 6, map. 1895. Price 15 cents.

No. 6. The Common Crow of the United States. By Walter B. Barrows and E. A. Schwarz. Pp. 96, pls. 1, figs. 2. 1895. [Out of print.]

No. 7. Preliminary Report on the Food of Woodpeckers. By F. E. L. Beal. The Tongues of Woodpeckers. By F. A. Lucas. Pp. 44, pls. 4, figs. 4. 1895. Price 10 cents.

No. 8. The Jack Rabbits of the United States. By T. S. Palmer. Pp. 84, pls. 7 (including 3 maps), figs. 2. 1896. [Out of print.]

Same, revised edition. Pp. 88, pls. 6 (including 2 maps), figs. 3. 1897. Price 10 cents.

No. 9. Cuckoos and Shrikes in Their Relation to Agriculture. The Food of Cuckoos, by F. E. L. Beal. The Food of Shrikes, by Sylvester D. Judd. Pp. 26, pl. 1, fig. 1. 1898. Price 5 cents.

No. 10. Life Zones and Crop Zones of the United States. By C. Hart Merriam. Pp. 79, colored map. 1898. Price 10 cents.

No. 11. The Geographic Distribution of Cereals in North America. By C. S. Plumb. Pp. 24, maps 4. 1898. Price 10 cents.

No. 12. Legislation for the Protection of Birds other than Game Birds. By T. S. Palmer. Pp. 94, maps 3, figs. 7. 1900. [Out of print.]

Same, revised edition. Pp. 143, maps 5, figs. 6. 1902. Price 10 cents.

No. 13. Food of the Bobolink, Blackbirds, and Grackles. By F. E. L. Beal. Pp. 77, figs. 6, map. 1900. Price 5 cents.

No. 14. Laws Regulating the Transportation and Sale of Game. By T. S. Palmer and H. W. Olds. Pp. 89, pls. 9 (including 5 maps). Price 10 cents.

No. 15. The Relation of Sparrows to Agriculture. By Sylvester D. Judd. Pp. 98, pls. 4, figs. 19. 1901. Price 10 cents.

No. 16. Digest of Game Laws for 1901. By T. S. Palmer and H. W. Olds. Pp. 152, pls. 8 (including 7 maps). 1901. Price 10 cents.

No. 17. Birds of a Maryland Farm. A Local Study of Economic Ornithology. By Sylvester D. Judd. Pp. 116, pls. 17, figs. 41. 1902. [Out of print.]

No. 18. Distribution and Migration of North American Warblers. By Wells W. Cooke. Pp. 142. 1904. Price 10 cents.

No. 19. Hunting Licenses Their History, Objects, and Limitations. By T. S. Palmer. Pp. 72, pls. 7 (including 7 maps). 1904. Price 10 cents.

No. 20. Coyotes in Their Economic Relations. By David E. Lantz. Pp. 28. 1905. Price 5 cents.

No. 21. The Bobwhite and Other Quails of the United States in Their Economic Relations. By Sylvester D. Judd. Pp. 66, pls. 2, figs. 10. 1905. Price 5 cents.

No. 22. Birds Known to Eat the Boll Weevil. By Vernon Bailey. Pp. 16. 1905. Price 5 cents.

No. 23. The Horned Larks and Their Relation to Agriculture. By W. L. McAtee. Pp. 37, pls. 2, figs. 13. 1905. Price 5 cents.

No. 24. The Grouse and Wild Turkeys of the United States and Their Economic Value. By Sylvester D. Judd. Pp. 55, pls. 2. 1905. Price 10 cents.

No. 25. Birds that Eat the Cotton Boll Weevil. A Report of Progress. By Arthur H. Howell. Pp. 22. 1906. Price 10 cents.
No. 26. Distribution and Migration of North American Ducks, Geese, and Swans. By Wells W. Cooke. Pp. 90. 1906. Price 10 cents.
No. 27. The North American Eagles and Their Economic Relations. By Harry C. Oberholser. Pp. 31, pls. 2, figs. 2. 1906. Price 10 cents.
No. 28. Game Commissioners and Wardens: Their Appointment, Powers, and Duties. By R. W. Williams, jr. Pp. 285, pls. 7. 1907. Price 35 cents.
No. 29. The Relation of Birds to the Cotton Boll Weevil. By Arthur H. Howell. Pp. 31, pls. 1, figs. 6. 1907. Price 10 cents.
No. 30. Birds of California in Relation to the Fruit Industry. Part 1. By F. E. L. Beal. Pp. 100, pls. 5. 1907.
No. 31. An Economic Study of Field Mice (Genus *Microtus*). By David E. Lantz. Pp. 64, pls. 8, figs. 3. 1907.

2. *North American Fauna.*—This class includes reports upon the birds and mammals collected in the field and upon the more technical work of the Survey, particularly that which relates to the geographic distribution of birds and mammals.

LIST OF NORTH AMERICAN FAUNAS.

No. 1. Revision of the North American Pocket Mice. By C. Hart Merriam. Pp. 36, pls. 4. 1889. Price 10 cents.
No. 2. Descriptions of Fourteen New Species and One New Genus of North American Mammals. By C. Hart Merriam. Pp. 52, pls. 8, figs. 7. 1889. Price 10 cents.
No. 3. Results of a Biological Survey of the San Francisco Mountain Region and Desert of the Little Colorado, Arizona. By C. Hart Merriam and Leonhard Stejneger. Pp. 136, pls. 14, maps 5 (colored), figs. 2. 1890. Price 25 cents.
No. 4. Description of Twenty-six New Species of North American Mammals. By C. Hart Merriam. Pp. 60, pls. 3, figs. 3. 1890. Price 10 cents.
No. 5. Results of a Biological Reconnoissance of South-Central Idaho. By C. Hart Merriam and Leonhard Stejneger. Descriptions of a New Genus and Two New Species of North American Mammals. By C. Hart Merriam. Pp. 132, pls. 4 (1 colored), figs. 4. 1891. Price 15 cents.
NOTE.—Numbers 6 and 9 of this series have not been issued.
No. 7. The Death Valley Expedition: A Biological Survey of Parts of California, Nevada, Arizona, and Utah. Part II. 1. Report on Birds, by A. K. Fisher: 2. Report on Reptiles and Batrachians, by Leonhard Stejneger; 3. Report on Fishes, by Charles H. Gilbert; 4. Report on Insects, by C. V. Riley; 5. Report on Mollusks, by R. E. C. Stearns; 6. Report on Desert Trees and Shrubs, by C. Hart Merriam; 7. Report on Desert Cactuses and Yuccas, by C. Hart Merriam; 8. List of Localities, by T. S. Palmer. Pp. 402, pls. 15, maps 5, figs. 2. 1893. [Out of print.]
No. 8. Monographic Revision of the Pocket Gophers, Family Geomyidæ (exclusive of the Species of Thomomys). By C. Hart Merriam. Pp. 258, pls. 20, figs. 71, maps 4 (colored). 1895. Price 35 cents.
No. 10. Revision of the Shrews of the American Genera Blarina and Notiosorex. By C. Hart Merriam. The Long-tailed Shrews of the Eastern United States. By Gerrit S. Miller, jr. Synopsis of the American Shrews of the Genus Sorex. By C. Hart Merriam. Pp. 124, pls. 12, figs. 3. 1895. Price 15 cents.
No. 11. Synopsis of the Weasels of North America. By C. Hart Merriam. Pp. 44, pls. 6, figs. 16. Price 10 cents.
No. 12. The Genera and Subgenera of Voles and Lemmings. By Gerrit S. Miller, jr. Pp. 84, figs. 40, pls. 3. Price 10 cents.
No. 13. Revision of the North American Bats of the Family Vespertilionidæ. By Gerrit S. Miller, jr. Pp. 140, pls. 3, figs. 40. 1897. Price 10 cents.
No. 14. Natural History of the Tres Marias Islands, Mexico. Prepared under the direction of C. Hart Merriam. General Account of the Islands, with Reports on Mammals and Birds, by E. W. Nelson. Reptiles, by Leonhard Stejneger. Notes on Crustacea, by Mary J. Rathbun. Plants, by J. N. Rose. Bibliography, by E. W. Nelson. Pp. 97, map, figs. 2. 1899. Price 10 cents.
No. 15. Revision of the Jumping Mice of the Genus Zapus. By Edward A. Preble. Pp. 42, pl. 1, figs. 4. 1899. Price 5 cents.
No. 16. Results of a Biological Survey of Mount Shasta, California. By C. Hart Merriam. Pp. 179, pls. 5, figs. 46. 1899. Price 20 cents.

No. 17. Revision of American Voles of the Genus Microtus. By Vernon Bailey. Pp. 88, pls. 5, figs. 17. 1900. Price 10 cents.
No. 18. Revision of the Pocket Mice of the Genus Perognathus. By Wilfred H. Osgood. Pp. 72, pls. 4 (including 2 maps), figs. 15. 1900. Price 10 cents.
No. 19. Results of a Biological Reconnoissance of the Yukon Region: General Account of the Region. Annotated List of Mammals, by Wilfred H. Osgood. Annotated List of Birds, by Louis B. Bishop. Pp. 100, pls. 7 (including map). 1900. [Out of print.]
No. 20. Revision of the Skunks of the Genus Chincha [Mephitis]. By Arthur H. Howell. Pp. 62, pls. 8. 1901. Price 10 cents.
No. 21. Natural History of the Queen Charlotte Island, British Columbia, and Natural History of the Cook Inlet Region, Alaska. By Wilfred H. Osgood. Pp. 87, pls. 7 (including map), fig. 1. 1901. Price 10 cents.
No. 22. A Biological Investigation of the Hudson Bay Region. By Edward A. Preble. Pp. 140, pls. 14 (including map). 1902. Price 20 cents.
No. 23. Index Generum Mammalium: A List of the Genera and Families of Mammals. By T. S. Palmer. Pp. 984. 1904. [Out of print.]
No. 24. A Biological Reconnoissance of the Base of the Alaska Peninsula. By Wilfred H. Osgood. Pp. 86, pls. 7 (including 2 maps). 1904. Price 10 cents.
No. 25. Biological Survey of Texas: Life Zones, with Characteristic Species of Mammals, Birds, Reptiles, and Plants; Reptiles, with Notes on Distribution; Mammals, with Notes on Distribution, Habits, and Economic Importance. By Vernon Bailey. Pp. 222, pls. 16 (including 6 maps), figs. 24 (including 16 maps). 1905. Price 50 cents.
No. 26. Revision of the Skunks of the Genus Spilogale. By Arthur H. Howell. Pp. 55, pls. 10 (including 1 map). 1906. Price 25 cents.

3. *Circulars.*—These serve a very useful purpose as vehicles for practical information of various kinds. Many are in the nature of emergency circulars, to inform farmers or others of methods of dealing with pests. They rarely exceed six or eight pages and are widely distributed.

LIST OF CIRCULARS.

No. 1. Circular on the Food Habits of Birds. By C. Hart Merriam. Pp. 3. 1886. Second edition issued same year. [Out of print.]
No. 2. Circular on the English Sparrow (*Passer domesticus*). By C. Hart Merriam. P. 1. 1886. [Out of print.]
No. 3. Circular on the Economic Relations of Mammals. By C. Hart Merriam. Pp. 3. 1886. Second edition same year. [Out of print.]
No. 4. Instructions for the Collection of Stomachs. By C. Hart Merriam. P. 1. 1886. [Superseded by No. 46.]
No. 5. Circular to Rice Growers. By C. Hart Merriam. 1886. [Out of print.]
No. 6. Letter of Acknowledgment of Receipt of Schedule of English Sparrow. 1886. [Not for distribution.]
No. 7. Circular to Postmasters in Relation to the English Sparrow. 1886. [Not for distribution.]
No. 8. Circular on the Geographical Distribution and Migration of North American Birds for 1887. By C. Hart Merriam. Pp. 4. 1887. [Out of print.]
No. 9. Circular on Gophers. P. 1. 1888. Second edition in 1889. [Out of print.]
No. 10. Circular on Killdeer Plover. P. 1. 1889. [Out of print.]
No. 11. Brief Directions for the Measurement of Small Mammals and the Preparation of Museum Skins. By C. Hart Merriam. Pp. 4, figs. 4. 1889.
No. 12. Directions for Collecting the Stomachs of Birds. By C. Hart Merriam. Pp. 3. 1891. [Superseded by No. 46.]
Nos. 13, 14, 15, 16, 18, 23, 24, 25, 26, 27. Notification (and Receipt) Blanks of Publications Mailed. [Not for distribution.]
No. 17. Bird Day in the Schools. By T. S. Palmer. Pp. 4. 1896. [Out of print.]
Same, reprint. 1905. [Out of print.]
Same, reprint. 1907.
No. 19. Circular [Requests for Information] in Relation to Bounties on Mammals and Birds. P. 1. 1896.
No. 20. Distribution and Sale of Publications. Pp. 2. 1896. [Out of print.]
Nos. 21, 22. Geographic Distribution of North American Cereals [Request for Information]. By O. S. Plumb. 1897.

No. 28. Directory of State Officials and Organizations Concerned with the Protection of Birds and Game. By T. S. Palmer. Pp. 8. 1900. [Superseded by No. 62.]
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No. 30. Wild Animals and Birds which may be Imported without Permits. P. 1. 1900.
No. 31. Information Concerning Game: Seasons, Shipment, and Sale. By T. S. Palmer and H. W. Olds. Pp. 20. 1900.
No. 32. Directions for the Destruction of Prairie Dogs. By C. Hart Merriam. Pp. 2. 1901.
No. 33. Protection of Birds and Game: Directory of State Officials and Organizations for 1901. By T. S. Palmer. Pp. 10. 1901. [Superseded by No. 62.]
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No. 35. Directory of State Officials and Organizations Concerned with the Protection of Birds and Game, 1902. By T. S. Palmer. Pp. 10. 1902. [Superseded by No. 62.]
No. 36. Importation of Reptiles into Hawaii. P. 1. 1902. [Out of print.]
No. 37. Regulations for the Importation of Eggs of Game Birds for Propagation. Pp. 2. 1902.
No. 38. Interstate Commerce in Birds and Game. Pp. 3. 1902.
No. 39. Regulations for the Protection of Game in Alaska. Pp. 6. 1903. [Superseded by No. 42.]
No. 40. Directory of State Officials and Organizations Concerned with the Protection of Birds and Game, 1903. By T. S. Palmer. Pp. 12. 1904. [Superseded by No. 62.]
No. 41. Letter Calling for Data on Migration of Five Species of Birds in the Northwestern United States and British Provinces. By C. Hart Merriam. P. 1. 1904.
No. 42. Regulations for the Protection of Game in Alaska for the Year 1904 Pp. 6. 1904.
No. 43. Definitions of Open and Closed Seasons for Game. By Henry Oldys Pp. 8. 1904.
No. 44. Directory of State Officials and Organizations Concerned with the Protection of Birds and Game, 1904. By T. S. Palmer. Pp. 15. 1904. [Superseded by No. 62.]
No. 45. Warning against Trespass on the Breton Island Reservation. P. 1. 1905.
No. 46. Directions for Collecting Birds' Stomachs. By C. Hart Merriam. P. 1. 1905.
No. 47. Recommendations of State Game Commissioners and Wardens for 1905. By T. S. Palmer. Pp. 12. 1905. [Out of print.]
No. 48. [Prohibition of] Importation of Snakes into Hawaii. P. 1. 1905. [Out of print.]
No. 49. Directions for Preparing Specimens of Large Mammals in the Field. By C. Hart Merriam. Pp. 4, figs. 6. 1905.
No. 50. Directory of State Officials and Organizations Concerned with the Protection of Birds and Game, 1905. By T. S. Palmer. Pp. 16. 1905. [Superseded by No. 62.]
No. 51. List of Publications of the Biological Survey, Department of Agriculture. Pp. 6. 1906. [Superseded by No. 60.]
No. 52. Directions for Destroying Pocket Gophers. By David E. Lantz. Pp. 4. 1906.
No. 53. Directory of Officials and Organizations Concerned with the Protection of Birds and Game. 1906. By T. S. Palmer. Pp. 16. 1906. [Superseded by No. 62.]
No. 54. Statistics of Hunting Licenses. By T. S. Palmer. Pp. 24. 1906.
No. 55. Directions for the Destruction of Wolves and Coyotes. By Vernon Bailey. Pp. 6. 1907.
No. 56. Value of Swallows as Insect Destroyers. By H. W. Henshaw. Pp. 4. 1907.
No. 57. Birds useful in the War against the Cotton Boll Weevil. By H. W. Henshaw. Pp. 4. 1907.
No. 58. Destruction of Deer by the Northern Timber Wolf. By Vernon Bailey. P. 1. 1907.
No. 59. Game Protection in Florida. By R. W. Williams, jr. Pp. 11. 1907.

No. 60. List of Publications of the Biological Survey, Department of Agriculture. Pp. 8. 1907. [Revised to November, 1907.]
No. 61. Hawks and Owls from the Standpoint of the Farmer. By A. K. Fisher. Pp. 18, figs. 6. 1907.
No. 62. Directory of Officials and Organizations Concerned with the Protection of Birds and Game, 1907. By T. S. Palmer. Pp. 16. 1907.

4. *Farmers' Bulletins.*—These have much the same function as the circulars, and are particularly useful because of their wide circulation. In them are published articles of an economic character which are of too great length for circulars.

LIST OF FARMERS' BULLETINS.

No. 54. Some Common Birds in Their Relation to Agriculture. By F. E. L. Beal. Pp. 40, figs. 22. 1897.
No. 160. Game Laws for 1902. A summary of the Provisions relating to Seasons, Shipment, Sale, and Licenses. By T. S. Palmer and H. W. Oldys. Pp. 56, maps 3. 1902.
No. 180. Game Laws for 1903. A Summary of the Provisions Relating to Seasons, Shipment, Sale, and Licenses. By T. S. Palmer, Henry Oldys, and R. W. Williams, jr. Pp. 56, maps 5. 1903.
No. 197. Importation of Game Birds and Eggs for Propagation. By T. S. Palmer and Henry Oldys. Pp. 30. 1904.
No. 207. Game Laws for 1904. A Summary of the Provisions Relating to Seasons, Shipment, Sale, and Licenses. By T. S. Palmer, Henry Oldys, and R. W. Williams, jr. Pp. 64, figs. 5 (maps). 1904.
No. 226. Relation of Coyotes to Stock Raising in the West. By David E. Lantz. Pp. 24, fig. 1905.
No. 230. Game Laws for 1905. A Summary of the Provisions Relating to Seasons, Shipment, Sale, and Licenses. By T. S. Palmer, Henry Oldys, and R. W. Williams, jr. Pp. 54. 1905.
No. 265. Game Laws for 1906. A Summary of the Provisions Relating to Seasons, Shipment, Sale, and Licenses. By T. S. Palmer and R. W. Williams, jr. Pp. 54. 1906.
No. 297. Methods of Destroying Rats. By David E. Lantz. Pp. 8, fig. 1. 1907.
No. 308. Game Laws for 1907. A Summary of the Provisions Relating to Seasons, Shipment, Sale, and Licenses. By T. S. Palmer, Henry Oldys, and Chas. E. Brewster. Pp. 52, maps 4. 1907.

5. *Yearbook articles.*—These consist of articles on subjects likely to interest the general public. They are reprinted with a view to the wide dissemination of information on various subjects investigated by the Survey.

REPRINTS OF ARTICLES PUBLISHED IN YEARBOOK.

Geographic Distribution of Animals and Plants in North America. By C. Hart Merriam. Yearbook for 1894. Pp. 203–214, map. [Out of print.]
Hawks and Owls from the Standpoint of the Farmer. By A. K. Fisher. Yearbook for 1894. Pp. 215–232, pls. 3, figs. 4.
Crow Blackbirds and their food. By F. E. L. Beal. Yearbook for 1894. Pp. 233–248, fig. [Out of print.]
Four Common Birds of the Farm and Garden. By Sylvester D. Judd. Yearbook for 1895. Pp. 405–418, figs. 4.
The Meadow Lark and Baltimore Oriole. By F. E. L. Beal. Yearbook for 1895. Pp. 419–430, figs. 2.
Extermination of Noxious Animals by Bounties. By T. S. Palmer. Yearbook for 1896. Pp. 55–68. [Out of print.]
The Blue Jay and Its Food. By F. E. L. Beal. Yearbook for 1896. Pp. 197–206, figs. 3.
Birds that Injure Grain. By F. E. L. Beal. Yearbook for 1897. Pp. 345–354. [Out of print.]
Danger of Introducing Noxious Animals and Birds. By T. S. Palmer. Yearbook for 1898. Pp. 87–110, pl. 1, figs. 6.
Birds as Weed Destroyers. By Sylvester D. Judd. Yearbook for 1898. Pp. 221–232, pl. 1, figs. 7.

Review of Economic Ornithology in the United States. By T. S. Palmer. Yearbook for 1899. Pp. 259–292, pls. 8 (including map), fig. [Out of print.]
Food of Nestling Birds. By Sylvester D. Judd. Yearbook for 1900. Pp. 411–436, pls. 5, figs. 9.
How Birds Affect the Orchard. By F. E. L. Beal. Yearbook for 1900. Pp. 291–304, figs. 5.
Prairie Dogs of the Great Plains. By C. Hart Merriam. Yearbook for 1901. Pp. 257–270, pls. 3, figs. 2.
Two Vanishing Game Birds. By A. K. Fisher. Yearbook for 1901. Pp. 447–458, pls. 2, figs. 3.
Audubon Societies in Relation to the Farmer. By Henry Oldys. Yearbook for 1902. Pp. 200–218, pls. 2, figs. 2. [Out of print.]
The Agaves, a Remarkable Group of Useful Plants. By E. W. Nelson. Yearbook for 1902. Pp. 313–320, pls. 4. [Out of print.]
Economic Value of the Bobwhite. By Sylvester D. Judd. Yearbook for 1903. Pp. 193–204, pl. 1.
Some New Facts about the Migration of Birds. By Wells W. Cooke. Yearbook for 1903. Pp. 371–386, maps 2.
Relation of Birds to Fruit Growing in California. By F. E. L. Beal. Yearbook for 1904. Pp. 241–254.
Some Benefits the Farmer May Derive from Game Protection. By T. S. Palmer. Yearbook for 1904. Pp. 509–520.
Game Protection in 1904. By T. S. Palmer. Yearbook for 1904. Pp. 606–610.
Meadow Mice in Relation to Agriculture and Horticulture. By D. E. Lantz. Yearbook for 1905. Pp. 363–376, pls. 4, fig. 1.
Federal Game Protection: A Five Years' Retrospect. By T. S. Palmer. Yearbook for 1905. Pp. 541–562, pl. 1, figs. (maps) 13.
Game Protection in 1905. By T. S. Palmer. Yearbook for 1905. Pp. 611–617.
Cage-Bird Traffic of the United States. By Henry Oldys. Yearbook for 1906. Pp. 165–180, pls. 2.
Birds that Eat Scale Insects. By W. L. McAtee. Yearbook for 1906. Pp. 189–198, figs. 3.
The Game Warden of To-day. By R. W. Williams, jr. Yearbook for 1906. Pp. 213–224.
Game Protection in 1906. By T. S. Palmer. Yearbook for 1906. Pp. 533–540.

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60TH CONGRESS, 1st Session } SENATE { DOCUMENT No. 151

EXAMINATIONS FOR THE DRAINAGE OF LANDS

MADE BY THE

DEPARTMENT OF THE INTERIOR

JANUARY 7, 1908.—Referred to the Committee on Public Lands and ordered to be printed, with maps, etc.

WASHINGTON
GOVERNMENT PRINTING OFFICE
1908

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EXAMINATIONS FOR DRAINAGE OF LANDS.

LETTER

FROM

THE SECRETARY OF THE INTERIOR,

TRANSMITTING

A REPORT UPON THE EXAMINATIONS FOR THE DRAINAGE OF LANDS, MADE BY THE DEPARTMENT.

JANUARY 7, 1908.—Referred to the Committee on Public Lands and ordered to be printed, with maps, etc.

SECRETARY'S OFFICE,
DEPARTMENT OF THE INTERIOR,
Washington, D. C., January 4, 1908.

SIR: The following report upon the examinations for the drainage of lands, made by this Department, together with topographic maps and other data, is transmitted to the Senate in accordance with its request of December 11.

Very respectfully,

JAMES RUDOLPH GARFIELD,
Secretary.

The PRESIDENT OF THE SENATE.

REPORT ON EXAMINATIONS FOR THE DRAINAGE OF LANDS.

GENERAL STATEMENT.

Examinations for the drainage of lands have for many years been conducted by the United States Geological Survey, a bureau of the Interior Department, in the prosecution of the investigations of the Survey authorized by Congressional enactment. The first Director of the Survey interpreted the act of Congress creating the Survey as requiring him "to begin a rigid scientific classification of the national domain * * * and to produce a series of land maps

which should show all those features upon which intelligent agricul-turists, miners, engineers, and timbermen might hereafter base their operations * * * ." The act passed by Congress on August 7, 1882, authorized the Director of the Geological Survey to continue the preparation of such a geologic map of the United States.

The accumulated results of the investigations carried on under this and succeeding acts have served as a basis for many lines of Government work. As a result of the topographic and hydrographic surveys, for example, it became possible to commence the work of irrigating the arid lands immediately after the passage of the reclamation act of 1902. If the participation of the Federal Government in the drainage of wet lands should be approved the same character of preliminary information will be necessary, and the Geological Survey work is as applicable to one as to the other. The following pages contain a statement of the amount and scope of information now on hand as the product of the regular work of the Geological Survey and the application thereof to the specific problems of drainage.

More than a half century ago the Federal Government took official cognizance of the vast swamp areas of the United States, and Congress in 1850 passed the swamp-land act, whereby there have been patented to the various public-land States, up to June 30, 1906, 63,324,[illegible]18 acres of "swamp land." Following this, in the early eighties, Director John W. Powell, of the Geological Survey, assigned to Prof. Nathaniel S. Shaler the geological study of the swamps of the Atlantic coast. The results of Professor Shaler's first investigations are contained in a report on the Seacoast Swamps of the United States, published in 1884–85, as part of the Sixth Annual Report of the United States Geological Survey. This comprised a reconnaissance and study of the marshes of New England, which, according to the report, amounted to some 15,000 acres.

Then followed a general investigation by Professor Shaler of the entire swamp area of the United States east of the one hundredth meridian, the results of which were published in the Tenth Annual Report of the Geological Survey, 1888–89. In this report Professor Shaler, referring to the value of swamp lands, pointed out that they contain the dormant wealth of the nation. He called attention to the fact that in Great Britain and Ireland fully one-fifth of the most fertile agricultural lands has been reclaimed by drainage. During the time of the Saxon Kingdoms, England was, to a great extent, occupied by morasses, the sites of which are now indicated by the great and persistent fertility of the soil. The same statement is true with reference to a large portion of northern Europe and to the valley of the Po in Italy. Professor Shaler estimated that not far from one twentieth of the land now tillable in Europe was inundated and unfit for agriculture in the eighth century—in the same unprofitable condition in which are American swamps to-day. Calculating the drainable area in the United States at a total of 100,000 square miles, he compared the aggregate value of the district, measured in terms of production, with the area afforded by the fertile lands in the States of Ohio, Indiana, and Illinois. This report also included a detailed geological investigation of the Dismal Swamp in Virginia and North Carolina. These results were admittedly of a reconnaissance nature. In presenting a table of the principal swamp areas by States, Profes

FLORIDA
29000 SQUARE MILES

LOUISIANA
15000 SQUARE MILES

WESTERN STATES

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sor Shaler stated that the object was rather to indicate the importance of these lands to agriculture than to afford precise statistics as to the areas in question, and that such statistics could be obtained only when topographic maps of the country were available and the extent of each important morass carefully computed. (See Pl. I.)

It is not the province of this report to enter into the question of the desirability or value of drainage, as this is in every case a matter of estimate and opinion, while land values, either reclaimed or unreclaimed, are seldom alike in two localities. It may be broadly stated, however, that aside from the reclaimed swamp land near cities, the value of which can not be computed, it is well known, as stated by Professor Shaler, that for farming purposes reclaimed swamps furnish by far a greater store of available plant food than any other class of land.

An important feature of Professor Shaler's work was his study of the origin of morasses, their division into types, and their methods of growth. Such information is of great practical importance in the investigation of wet lands, because it permits the classification of morasses according to their agricultural value when drained.

The Geological Survey investigations of morasses have not been confined to the work of Shaler; but since the beginning of the Survey's operations they have been an important feature of the topographic work whenever such lands occurred in the areas under survey.

The making of a geologic map of the United States is a public work and is maintained by appropriations made annually by Congress. One-third of the area has already been covered topographically, and maps representing the results of these surveys are being printed at the rate of one new sheet every three days. The area covered by new maps published last year is 32,448 square miles, this work costing about $327,405. The facts shown on these maps, together with the hydrographic and geologic investigations of the Survey, afford all the preliminary information required for determining the feasibility of drainage projects and for planning the broad features, such as the location of levees and ditches. The engineer who is provided with such maps may proceed with his work with all the facts in mind, and he will not be liable to overlook some feature or physical condition that may later work adversely to his project.

The drainage of lands is a matter of practical engineering. The preliminary requirements are in no wise different from those governing the irrigation of arid lands, the construction of inland waterways, the prevention of floods, the conservation of water, or any other important engineering development. Such problems all involve engineering and physical factors, the control of which may extend beyond the area immediately under consideration. Therefore any great project of wet-land drainage is far above the plane of mere local ditching for the purpose of draining a few farms. If such work is to be prosecuted intelligently and purposefully the actual construction must be preceded by topographic surveys, measurement of stream flow, consideration of necessary capacity of channels both natural and artificial and their permanence, investigation of geologic conditions, and study of all the related phenomena of a climatological nature. The actual development can be prosecuted only by a competent corps of engineers.

The Geological Survey, up to June 1, 1907, had completed the topographic mapping of 34 per cent of continental United States. This is equal to 1,025,065 square miles, distributed as indicated in Table 1 and on Plate II.

TABLE 1.—*Area mapped and wet-land area in the United States.*

State or Territory.	Area in square miles.			Estimated land area needing drainage.	Morasses mapped by U. S. Geological Survey.
	Total, including water surface.	Mapped to June 1, 1907.	Per cent mapped.		
				Acres.	*Acres.*
Alabama	51,998	18,283	35	1,120,000	9,600
Arizona	113,956	62,712	55	.....	.....
Arkansas	53,335	20,469	38	5,760,000	144,400
California	158,297	79,381	50	1,000,000	294,900
Colorado	103,948	37,766	36	.....	.....
Connecticut	4,965	4,965	100	37,700	37,700
Delaware	2,370	1,008	43	200,000	77,200
District of Columbia	70	70	100	.....	.....
Florida	58,666	1,821	3	18,560,000	107,500
Georgia	59,265	16,855	28	2,400,000	.....
Idaho	84,313	15,196	18	.....	.....
Illinois	56,665	7,400	13	2,688,000	48,900
Indiana	36,354	2,458	7	800,000	1,600
Iowa	56,147	9,895	18	500,000	3,400
Kansas	82,158	64,159	78	160,000	.....
Kentucky	40,598	14,515	36	224,000	.....
Louisiana	48,506	7,923	17	9,600,000	2,868,800
Maine	33,040	6,805	20	2,560,000	50,200
Maryland	12,327	10,294	84	328,800	352,900
Massachusetts	8,266	8,266	100	148,000	147,900
Michigan	57,980	3,753	6	4,800,000	248,400
Minnesota	84,682	2,876	3	3,840,000	128,600
Mississippi	46,865	906	2	6,173,000	72,600
Missouri	69,420	34,017	49	1,920,000	16,300
Montana	146,572	47,189	32	.....	3,300
Nebraska	77,520	25,974	34	256,000	1,100
Nevada	110,690	40,482	36	.....	3,600
New Hampshire	9,341	3,160	33	384,000	10,500
New Jersey	8,224	7,821	95	592,300	592,300
New Mexico	122,634	28,735	23	.....	.....
New York	49,204	38,209	80	1,600,000	458,300
North Carolina	52,426	17,074	33	2,400,000	428,100
North Dakota	70,837	8,775	12	226,000	16,100
Ohio	41,040	19,997	49	800,000	36,000
Oklahoma [a]	70,057	36,495	52	.....	5,900
Oregon	96,699	16,280	17	.....	238,400
Pennsylvania	45,126	19,608	43	192,000	49,500
Rhode Island	1,248	1,248	100	17,900	17,900
South Carolina	30,989	5,496	17	1,760,000	.....
South Dakota	77,615	17,956	23	226,000	40,300
Tennessee	42,022	20,103	48	800,000	.....
Texas	265,896	65,845	25	2,240,000	.....
Utah	84,990	63,320	75	.....	.....
Vermont	9,564	3,537	38	256,000	27,200
Virginia	42,627	29,829	70	1,024,000	231,800
Washington	69,127	18,228	26	.....	42,000
West Virginia	24,170	24,120	99	.....	.....
Wisconsin	56,066	11,197	20	2,880,000	647,200
Wyoming	97,914	22,594	23	.....	49,400
Total	3,026,789	1,025,065	34	78,473,700	7,509,800

[a] Including Indian Territory.

The results are comprised in 1,637 topographic sheets which have been published by the Geological Survey, and of these, 402 show swamp areas scattered throughout all the principal sections of the United States. All of these indicate graphically the locations and boundaries of the swamps and their relation to the natural drainage channels, as well as the configuration of the surrounding country. The area of land which is subject to overflow, but which can not be considered perennial swamp, is not included in this report because it must be determined by a combination of climatological and flood-

flow data—information at present unavailable. A study of these maps indicates that undoubted success would attend the effort to drain wet lands in a very large number of areas in widely separated parts of the country.

The primary purpose of the topographic work of the Geological Survey is to secure a base for the geologic map of the United States described in a preceding paragraph. No suitable geologic map could be made without topographic surveys. Therefore the specific localities chosen for topographic mapping have naturally been those of greatest geologic or mineral importance. Such areas must of necessity have taken precedence over those in which the geologic features are subordinate.

Of course, in work of this kind the determination of the areas to be surveyed has been to a certain extent influenced by related Federal demands whenever the ultimate progress of the geologic map would not be inhibited thereby. While preserving the original purposes, it has been possible to facilitate other lines of Federal investigation. For example, before the organization of the Reclamation Service the Geological Survey had made large numbers of reconnaissance surveys of arid lands, which furnished a base for national reclamation of these lands.

Realizing the preparedness of the Survey and the fitness of its trained men for work of this character, Congress has seen fit in past years to delegate to it certain special mapping, for which special appropriations have been made. The Indian Territory and certain boundary surveys are examples of work of this character. Also, the mapping of national forests for the Forest Service, Department of Agriculture, is carried on by the Geological Survey topographers, under special appropriation, the former bureau being actuated by a desire to secure the best results for the least expenditure of money.

Thus, the Geological Survey has collected the topographic information indicated in Table 1 and Plate II, and for the ascertainment of the necessary facts concerning lands needing drainage it is merely necessary for Congress to authorize the extension of the scope of current work to cover this specific purpose, as has heretofore been done to meet other needs.

USES OF TOPOGRAPHIC MAPS.

These maps have a wide range of usefulness, both to the Government and to the public, being, in fact, the mother maps of the country. They have this value because the plans adopted for their survey are the mature result of years of thought and experience. The field work is so coordinated that the final result will be one great harmonious map of the country, systematically and scientifically constructed, and not scattered or haphazard plats independent of one another and of various degrees of accuracy.

The State Department makes use of them in connection with questions relating to the international boundaries. Wherever special boundary surveys have been made the results are incorporated in these maps.

The War Department uses the maps in many ways. The triangulation and leveling are of special value to the Engineer Corps as a basis for detailed river studies. The military information division

adds to the regular topographic maps such special field notes as are of service in maneuvers, such as location of wood, water, etc. One of the army officers engaged on this work states that he has been able in this way to record in one month the data which otherwise would have taken him two years to collect and map.

The Post-Office Department finds these maps exceedingly useful in defining rural routes and the lengths thereof, and by mere consultation of the maps is frequently able to regulate the establishment of new offices without field inspection.

The Treasury Department, through the Coast and Geodetic Survey, in 1903, made an adjustment of the great national net of precise levels, consisting of 19,753 linear miles run by various organizations. Of the Geological Survey leveling, 1,740 linear miles, or all that was so situated as to be available at that time, was utilized in this adjustment. The Geological Survey has run altogether 6,500 linear miles of the highest class of levels, which will ultimately be absorbed in this great net. In addition, many thousands of miles of ordinary quality have been run.

The Department of Agriculture has many uses for the sheets, plotting on them the soil areas when published maps are available, and using them in statistical work of various kinds. The Forest Service invariably uses these maps as a base on which to show timber stand and to plan operations.

In fact, there is scarcely a single branch of the Government service in which the topographic maps and records of the Geological Survey are not commonly required, and to which the published sheets are not furnished for official use. Efforts are being made by the Geological Survey to secure cooperation with all of these bureaus, with a view to increasing the usefulness of the maps and to avoiding any duplication of work.

The public uses of the maps are so numerous as to preclude any classification.

FEATURES SHOWN ON TOPOGRAPHIC MAPS.

On the topographic maps made by the United States Geological Survey, blue denotes water, brown denotes relief, and black denotes roads, bridges, houses, and other works of man. If these facts are kept in mind, the maps will assist in telling their own story.

Examination of one of the typical maps will show that the color blue appears in many shapes and outlines. When it appears in crooked bands, some wide and some narrow, it is obvious that rivers and streams are indicated. When the blue appears in spots of different shapes and sizes lakes or ponds are represented. On some of the maps other blue spots will appear, sometimes covering considerable space along the borders of the streams. These spots are made up of tufted lines that appear like bunches of grass and will readily be recognized as representing swamps and morasses. Some of these are salt marshes, represented by tufts on parallel lines, while to indicate fresh-water swamps the parallel lines are broken.

As above stated, brown denotes relief. By relief is meant the variation in height and shape of the land surfaces. The hills and mountains and the lowlands and valleys are shown in this way. The brown lines, known as contour lines, represent positions that are at certain levels above the sea, and should one go upon the

country shown by one of these maps and take a course along the path defined by one of these lines he would always be at the same elevation above sea level. At points readily identified the elevation is shown by figures to the nearest foot. Wherever these lines are closely set, that is, where there are only small or narrow spaces between them, it is obvious that the slopes are steep, but where they are far apart the slopes are gentle or indeed practically flat.

Everything on the map in black denotes development or division by mankind. A single heavy, broken black line denotes a political boundary. A double line denotes roads. Double broken lines denote private roads, wood roads, etc. In a similar conventional manner are shown railroads, canals, walls, bridges, ferries, fords, dams, locks, etc., while signs are adopted to denote bench marks, cemeteries, churches, schoolhouses, oil wells, mines, shafts, light-ships, lighthouses, life-saving stations, etc. All of these signs are illustrated and named on the back of each sheet.

It is possible to trace on such a map the area of a morass, the amount of land surface tributary to each stream, and the relative elevations of all topographic features. In other words, the map enables one to study the general situation in the only possible way to reach a thorough knowledge of the facts relating to any proposed improvement.

COST OF TOPOGRAPHIC MAPS.

The cost of these maps varies widely, according to the character of the country and the necessity for detailed surveys. Open, sparsely settled regions demand less detailed surveys than crowded, busy manufacturing and agricultural districts.

The cost of both field and office work during the year 1906–7 was 2.3 cents per acre for the Atlantic coastal plain, 3.5 cents per acre for the Appalachian region, and 2 cents per acre for the Mississippi Valley. The maps of these areas are all being published on a scale of about 1 inch to 1 mile, with contour intervals of 10 to 20 feet. The cost of surveys for special maps of various regions, especially in the case of detailed work in mountain country, far exceeds the above figures, but large-scale and accurate surveys, especially adapted for irrigation and drainage purposes, have not cost the Geological Survey more than 5 cents per acre, while in simple cases the cost has been as low as 1.6 cents per acre.

TYPICAL MAPS.

Several topographic maps, showing incidental swamp surveys, are here described, and the typical drainage problems presented therein are briefly discussed, in order to exemplify the practical application of these maps in the study of such problems.

CALIFORNIA MAPS.

In the Sacramento Valley and along its tributary valleys there are about 1,000,000 acres of the richest of lands that are subject to overflow. Some of this section has already been reclaimed, and as raw land it is valued at several hundred dollars per acre. The usual plan in reclaiming these lands is first to build a protecting levee and then to pump out the water inclosed. This is shown in the Sacramento Valley sheet "M" (Pl. III). In some of these lands, following drainage, irrigation is practiced by siphoning water back from the river.

Cooperative topographic surveys have been made by the Geological Survey and the State of California with special reference to drainage reclamation in this valley. The mapping of this area has been done on scales specially suited to meet fully the needs of drainage operations. With contour intervals of 5 feet, the field and office work has cost an average of 4 cents per acre. More detailed engineering data, not shown on the published map, are also on file in the office of the Survey and are available for any future requirements that may be made. In connection with these topographic surveys the level lines along the valley of Sacramento River and the permanent bench marks established at regular intervals will be of great importance in connection with all future construction of public works in the valley.

CLARKSDALE MAP.

In the upper Yazoo Delta, Mississippi, the Clarksdale quadrangle (Pl. IV), covering an area of 206,720 acres of swamp and overflowed land, was partially surveyed in 1907, in cooperation with the State of Mississippi, at a cost of 1.8 cents per acre.

The lands throughout this section have been formed by graded deposits of clay and sand, dropped by the receding floods of Mississippi River through countless ages, and are stated by the Department of Agriculture to be more fertile than even the rich loams of the Central States.

The peculiar physiography of this section is interesting both to the geologist and to the agriculturist. The gradual burial by silt of the ancient eroded delta furnishes a lesson to the former and a problem to the latter.

The map shows each bayou and slough, indicating their depth and their relation to the surface drainage in an unusually detailed manner, bringing out with special force the recent deeply cut channel of Sunflower River, resulting from a crevasse in the parent stream. It shows conclusively that every acre of the flat alluvial surface can be rescued from mosquitoes and consequent malaria and drained into this channel, which is separated at its old head from the Mississippi. It now has banks 44 feet high at Clarksdale and is capable of carrying the drainage from an immense territory.

MINNESOTA MAPS.

In the drainage survey of the Chippewa ceded lands of northern Minnesota (Pl. V) made during the past two years by the Geological Survey there is presented a class of work somewhat different from that of previous surveys. Minnesota has more than 6,000 square miles of wet lands and its legislature has made various appropriations for drainage work. The fact that comparatively few regular topographic maps of the United States Geological Survey are available for this State has made reconnaissance surveys absolutely necessary in all portions of the State where swamp-land drainage is being considered. By acts of Congress carrying an aggregate appropriation of $25,000 the Secretary of the Interior was directed to make drainage surveys and construction plans of the swamp lands comprised in the ceded Chippewa lands, embracing about 3,800 square miles in north-

ern Minnesota. This is the only extensive tract of swamp land remaining in public ownership.

Proceeding under this authorization, the Geological Survey has made detailed drainage surveys of 402,500 acres and has drawn plans for their reclamation. The cost of this survey was 1.6 cents per acre. It has also made, during the field season just closed, a detailed survey of about 1,280,000 additional acres, and is now working on office plans for the reclamation of this area. At least 750,000 acres of this ceded Chippewa land yet remain to be surveyed to fully comply with the directions of Congress.

This drainage survey presents a concrete example of the availability of the Geological Survey for any special class of surveying which may be delegated to it by Congress. As the legislation provided that this survey should be solely for drainage purposes, the usual methods of topographic mapping were modified to conform to this specific object. This modification, however, was mainly one of elimination of certain features of the regular topographic surveys of the Geological Survey. A full description of the survey, with reclamation plans of the first year's work under this special appropriation, is found in House Document No. 607, Fifty-ninth Congress, second session. It may be remarked that, had regular topographic mapping been extended over northern Minnesota, this special drainage survey would not have been necessary and much of the expense of preliminary surveys over other areas of the State could have been saved. However, since a drainage survey was what was desired by Congress, the existence of the topographic branch of the Geological Survey, with its thorough organization for field work and its available corps of trained topographers, has made it possible to prosecute this survey with the greatest economy as to cost and time, and with the most authoritative and comprehensive results.

MADISON MAP.

Madison, Wis., is located on a narrow strip of land and swamp separating Lakes Mendota and Monona. The topography, as shown by the Geological Survey map, is typical of the glacial-drift country, with its low, irregular hills, interspersed with swamps which are all at a nearly uniform elevation. These swamps in their present condition are a serious menace to the health and the comfort of the inhabitants of Madison. Their drainage, as shown by the topographic map of this quadrangle, presents a difficult problem from the fact that there is insufficient slope and because of the serious damage that would result to the business interests of the city should the lakes be lowered. The drainage of parts of the Madison swamps has been proposed and attempted, but without a topographic survey. These attempts have been abortive. Had the information shown by this map been in hand, no engineer would have recommended the prosecution of such work, but rather would have fallen back on the plan of diking the swamps and pumping out the surplus water—a remedy often adopted under similar conditions. In this connection it may be stated generally that drainage may be accomplished not only by the ordinary method of ditching, but under certain conditions the results may be attained by levees, dikes, sluices, or pumping, or by a combination of these.

SYRACUSE MAP.

This map (Pl. VI) shows another example of the value of topography in readily determining whether drainage projects are feasible. Lying between Oneida Lake, which is shown by the map to have an elevation of 370 feet, and Onondaga Lake, at 364 feet, are two tracts known as the Cicero Swamps. One of these swamps is shown to have an elevation of 395 feet and the other of only 365 feet. The lower one, with its very slight elevation above the drainage channels shown, would appear clearly to be impracticable of drainage by ditching, while the higher one, which approaches within 2 miles of Lake Oneida, could readily be ditched and drained.

STATEN ISLAND MAP.

On the Staten Island sheet, covering part of New Jersey and extending from the lower end of Staten Island to a point well above the Battery, is shown an entirely different type of wet land, viz, the salt marshes along Arthur Kill and Hackensack River. A large area has already been reclaimed, as shown by the map, while a study of this map and that of the Paterson quadrangle on the north indicates that thousands of additional acres now lying idle can be readily drained. The maps show plainly the accessibility of the land, the drainage which must be handled, and the general locations for the necessary dikes.

WILLIAMSTON MAP.

Throughout eastern North Carolina occur immense swamp areas, where the partially reclaimed lands under cultivation vie in fertility with the richest bottom lands of the Mississippi Valley. Extensive swamps are found along all the rivers in the seacoast section, such as are shown on the Williamston sheet (Pl. VII). This map portrays Roanoke River flowing with but a slight fall and meandering through its flood plain, which here has a width of about 4 miles. The river is rich in silt and has fertilized this valley to a great depth in an unknown number of years, so that wonderful conditions of plant growth are possible. A study of this map in the hands of an engineer, taken in connection with the gagings of the river made by the Geological Survey hydrographers, makes clear the feasibility of straightening the stream's tortuous course, constructing dikes to confine the flow, and reestablishing the regimen of the tributary streams. Without such comprehensive and detailed topographic and hydrographic data no intelligent plans for drainage could even be formulated.

PANASOFFKEE MAP.

The necessity for extending surveys and the impossibility of accomplishing drainage by individual effort is nowhere more evident than in Florida and Louisiana. The area of wet lands in these States is so vast and the natural drainage channels, such as they are, so complicated that it is easier there than in most other places to make expensive mistakes.

For example, the map of the Panasoffkee quadrangle in Florida, about one-half of which is swamp, covers an area of about 240 square miles and is yet insufficient to give the key to the drainage; add to this

the map of the area to the west, the Tsala Apopka, with another 240 square miles, and still the information is insufficient; add the Dunnellon sheet, showing the area north of the last, and for the proper understanding of this region we still need maps of areas to the south which are yet to be surveyed; so that in order to plan for the drainage of this one swamp along Withlacoochee River a survey of not less than 1,000 square miles is necessary. But when the map work shall have been carried far enough to give the engineer a thorough understanding of the lay of the land there will be no excuse for building expensive failures which are not only costly in themselves, but which deter others from taking up legitimate projects.

HYDROGRAPHIC INVESTIGATIONS.

No intelligent wet-land drainage can be accomplished with entire success unless the work is planned and executed with due regard for all necessities imposed by conditions affecting the flow of streams and the run-off from drainage areas, not only in the immediate localities in which the actual drainage work is to be performed, but throughout the tributary basins. Therefore the study of these matters ranks with the making of topographic surveys as a necessary preliminary to drainage construction. It should be remembered that the drainage of swamp lands involves merely the providing of means that will serve to accelerate the rate of run-off. In other words, the character of a certain area is changed from one that slowly yields up its stored water to one which gives up its water immediately. Take, for example, any river basin. It is well known that there are certain parts that dry out quickly after heavy precipitation, while other parts, commonly termed "swamps" or "morasses," give up their water slowly. The whole purpose of drainage is to put these wet lands in a condition in which they will yield up their stored water from precipitation as readily as, or in some cases more readily than, the well-drained parts of the basin.

Now each part of the basin has a certain amount of water, derived from precipitation, of which it has to dispose. The capacity of the river channels leading from all parts has been adjusted by nature so that they will readily carry off this water. Channels leading from quick-spilling surfaces are usually scoured and eroded until they can carry, without overflowing, all the water derived from such areas except in case of unusual flood. Conversely, channels from flat and swampy land are adjusted in the same way to accommodate the flow from such land. Now when such lands are drained these channels are artificially opened up or new ones are constructed, so that they will carry the water in greater quantity and within a shorter period. It must then be important to determine what size or capacity of channel will be sufficient to drain the water from such an area. If a ditch be too small, it will not perform satisfactory service. If it be too large, the parties engaged in the work of drainage will have expended more money than is necessary. When one considers the enormous areas contemplated in national drainage projects, it is readily seen that the Government might needlessly expend a huge sum of money by making ditches larger than is necessary. Therefore this matter must be studied at the outset, and the amounts of water that may be expected to flow from such areas should be determined, so that the ditch capacities may be made to fit such conditions.

It is obvious that this water drained from wet or swamp lands must be discharged into effluent rivers. Therefore river channels themselves must be adjusted so that they will carry a larger amount of water during flood seasons than they were previously called upon to carry. This is a most vital point. It must be remembered that by draining lands we are increasing the liability of the occurrence of floods in the rivers below. Any work that has the effect of increasing the rate of run-off from any portion of a basin must also help to fill the channel draining from that portion. It is very probable that unless this matter is handled with discretion there would be cases in which the values derived from the drainage of swamp lands would be more than offset by the damage caused in other parts of the basin, due to the occurrence of floods. The effect of this would be to create values in one place at the expense of values in another, but as the purpose of drainage is to increase wealth such a result would be entirely subversive.

The adjustment of channel capacities described in preceding paragraphs is specially important in those wet lands that border the rivers into which it is proposed to discharge the drained water. Such lands are usually overflowed by the rivers in flood season and practically become part of the river channel. It is therefore necessary to protect these lands by the erection of levees, and the location and height of the levees must be determined by the amount of water that the channel must carry. In order to determine this, hydrographic investigations, relating not only to the immediate area but to the entire drainage basin, must be made. It is well known that if a levee is set too far inland from the river banks, large areas of extremely valuable land may remain outside of the levee exposed to floods, not susceptible of drainage, and therefore lost. On the other hand, if the levees are placed too near the banks, the channel capacity of the river may not be sufficient, and the levees will be overtopped, with the usual great destruction of property. This, therefore, is another instance in which is demonstrated the necessity for preliminary hydrographic investigations.

For the period of fifteen years the Geological Survey has been carrying on such investigations under appropriations made from year to year by Congress embodied in the sundry civil bill, as follows:

> For gauging the streams and determining the water supply of the United States, and for the investigation of underground currents and artesian wells and the preparation of reports upon the best methods of utilizing the water resources.

The work above referred to has been continued under varying appropriations from year to year, and although it is not yet complete the results are of prime value in connection with all questions of water-supply development. Such of the work as has been done is directly applicable to the problem of land drainage. As in the case of the topographic surveys above described, special attention to land-drainage work in the future will require merely the allotment of specific sums from the appropriation to investigations of this character. Large allotments have, for example, been made from year to year in the interest of irrigation by reason of the activity of the United States in the prosecution of this work. A similar allotment of funds could with propriety be made to further enhance the interests of drainage, should Congress so direct.

The extent of the Survey's hydrographic work is shown in Plate II.

WORK OF THE RECLAMATION SERVICE.

The United States Reclamation Service in connection with the reclamation of lands in the arid region is confronted with many problems involving the drainage and relief of agricultural lands from excess of water. In any extensive region where irrigation is introduced, drainage is a necessary adjunct; otherwise, lands become water-logged and the water evaporating from the surface brings up alkali from the depths and eventually renders the land unfit for cultivation. Vast areas of land have had their fertility thus destroyed in Asia and Africa, in several of the Western States, and in other regions. Consequently, wherever drainage is not provided by nature, either by a considerable slope of the surface or by a subsoil of gravel or coarse sand, drainage must be provided artificially in order to prevent the destruction of fertility.

A typical region where drainage is a necessary accompaniment of irrigation is the Lower Carson Valley in the Truckee-Carson project, Nevada. The irrigation ditches follow the high lands and are constructed on the surface of the ground. The drainage ditches follow the lower portions and are usually entirely below the surface. Similar problems are encountered on other reclamation projects, such as the Bellefourche, S. Dak.; Yakima, Wash.; Minidoka, Idaho; Carlsbad, N. Mex., and others, where the irrigated lands must be promptly relieved of surplus water through drainage ditches.

In other regions the existence of surface water presents radically different problems. The Yuma project on the lower Colorado River will irrigate valley lands which in normal years are submerged by the annual overflow of the Colorado River, occurring in May, June, and July. To make this land habitable and productive it is necessary, first, to protect it from the overflow of the river; second, to supply it with water for irrigation; and third, to relieve it of the surplus waters which would be injurious if allowed to collect and evaporate. For protection from the floods of the river, levees are built on each side of the river of a sufficient height to prevent the normal overflow. Water is supplied through irrigation ditches to irrigate the land and the surplus is carried away by systems of drainage ditches constructed in the lower ground of the valley.

During the season of flood flow the water level in the river is higher than the surface of the valleys under cultivation. During this short period the drainage water will be collected and pumped over the levees into the river. The plan is to do this by means of water power secured from drops in the canal. The map of the Yuma project (Pl. XII, Fifth Annual Report of Reclamation Service) shows the location of the levees, irrigation canals, and the main drainage canals of the valley.

Such problems as that of the Colorado Valley are susceptible of a complete or partial solution by another method. If funds were available it would probably be found more effective and desirable to control the entire volume of Colorado River in storage reservoirs, involving very large expenditures, and allow the surface waters to flow to the sea in moderate volumes that would not overflow the banks of the river, most of the water being used for irrigation. This would entirely eliminate the necessity of levees and drainage pumps and, to a large extent, the drainage ditches. The storage system will be

necessary in any event to conserve water for irrigation of arid lands, and when the development of the Colorado River system is complete the levees will largely fall into disuse.

One of the most extensive and interesting drainage problems the Reclamation Service has on hand is on the Klamath project, lying partly in Oregon and partly in California. This is shown on the accompanying general map of the Klamath project (Pl. VIII). By an examination of this map it will be seen that Tule Lake, which has no outlet, is fed by the waters of Lost River, rising in Clear Lake, flowing northwestward, westward, and finally southeastward into Tule Lake. It is proposed to irrigate Langell, Yonna, and Poe valleys from Lost River by using Clear Lake as a storage reservoir, and thus to a large extent consuming the water for irrigation instead of allowing it to flow to Tule Lake.

The return seepage and such flood waters as may not be needed for irrigation will be conducted to Klamath River instead of discharging into Tule Lake. Thus deprived of its water supply, Tule Lake will largely disappear by evaporation, and it will be possible to irrigate and cultivate about 50,000 acres in the bed of the present lake.

Lower Klamath Lake and the surrounding marshes also furnish an example of reclamation of this kind. A levee is being built along the line of the California Northwestern Railroad, northeast of Lower Klamath Lake, diverting the waters of Klamath River, which constitute the main source of supply for the lake and the surrounding marsh. Gates will be provided in the levee, so that whenever the waters of Lower Klamath Lake are higher than those of Klamath River it can be drained through these gates and at times when the Klamath River is high the gates can be closed. This process will dry up the marshes and a portion of the lake, which will then be irrigated for cultivation and will be very rich.

The map of the Klamath project illustrates the importance of a wide and comprehensive study of the drainage problem in order that such enterprises may be wisely carried out. For example, unless broadly studied, the swamp around Clear Lake might have been drained, cultivated, and thickly settled. Perhaps a town would have grown up on this land, whereas a thorough examination of the entire problem shows that the best use of this lake and swamp area is that of a reservoir site to control the waters of Lost River for the irrigation of the valleys below and for the reclamation of Tule Lake in the manner described.

Similarly, any consideration of drainage in the country in general should be accompanied by a study of the problem of water storage, for the purposes of flood protection, irrigation, navigation, power, etc., all of which should be considered together, to the end that the natural opportunities for water conservation and regulation may be saved, and that the greatest benefits permissible by natural conditions may be secured.

The Reclamation Service, however, is meeting the problem of drainage and flood protection only where this becomes necessary in working out a reclamation project authorized under the act of June 17, 1902.

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60TH CONGRESS, 1st Session. } SENATE. { DOCUMENT No. 185.

COMMERCIAL AGREEMENT BETWEEN GERMANY AND UNITED STATES, WITH ITS ANNEXES, ETC.

MESSAGE

FROM THE

PRESIDENT OF THE UNITED STATES,

TRANSMITTING

THE COMMERCIAL AGREEMENT BETWEEN GERMANY AND THE UNITED STATES, WITH ITS SEVERAL ANNEXES, AND THE REPORT OF THE AMERICAN COMMISSION ON WHICH IT IS BASED.

JANUARY 22, 1908.—Read; referred to the Committee on Finance and ordered to be printed.

To the Senate and House of Representatives:

In my Message to the Congress on December 3, 1907, I referred to the circumstances leading to the conclusion of a new temporary Commercial Agreement between the United States and Germany and said:

The agreement and the report of the Commission on which it is based will be laid before the Congress for its information.

This careful examination into the tariff relations between the United States and Germany involved an inquiry into certain of our methods of administration which had been the cause of much complaint on the part of German exporters. In this inquiry I became satisfied that certain vicious and unjustifiable practices had grown up in our customs administration, notably the practice of determining values of imports upon detective reports never disclosed to the persons whose interests were affected. The use of detectives, though often necessary, tends toward abuse, and should be carefully guarded. Under our practice as I found it to exist in this case, the abuse had become gross and discreditable. Under it, instead of seeking information as to the market value of merchandise from the well-known and respected members of the commercial community in the country of its production, secret statements were obtained from informers and discharged employees and business rivals, and upon this kind of secret evidence the values of imported goods were frequently raised and heavy penalties were frequently imposed upon importers who were never permitted to know what the evidence was and who never had an opportunity to meet it. It is quite probable that this system tended toward an increase of the duties collected upon imported goods, but I conceive it to be a violation of law to exact more duties than the law provides, just as it is a violation to admit goods upon the payment of less than the legal rate of duty. This practice was repugnant to the spirit of American

law and to American sense of justice. In the judgment of the most competent experts of the Treasury Department and the Department of Commerce and Labor it was wholly unnecessary for the due collection of the customs revenues, and the attempt to defend it merely illustrates the demoralization which naturally follows from a long-continued course of reliance upon such methods. I accordingly caused the regulations governing this branch of the customs service to be modified so that values are determined upon a hearing in which all the parties interested have an opportunity to be heard and to know the evidence against them. Moreover our Treasury agents are accredited to the government of the country in which they seek information, and in Germany receive the assistance of the quasi-official chambers of commerce in determining the actual market value of goods, in accordance with what I am advised to be the true construction of the law.

These changes of regulations were adapted to the removal of such manifest abuses that I have not felt that they ought to be confined to our relations with Germany, and I have extended their operation to all other countries which have expressed a desire to enter into similar administrative relations.

For the information of the Congress, I transmit herewith the Commercial Agreement referred to, with its several annexes, and the report of the American Commission on which it is based.

One of the annexes to the agreement is a diplomatic note from the Secretary of State to the German ambassador at this capital, under date of May 2, 1907, reading as follows:

DEPARTMENT OF STATE, *May 2, 1907.*

EXCELLENCY: Referring to the Commercial Agreement concluded this day between this Government and the Imperial German Government, I have the honor to inform you that the President of the United States authorizes me to state that he will recommend to the Congress the enactment of an amendment of section 7 of the customs administrative act of June 10, 1890, as amended by section 32, act of July 24, 1897, so as to read as follows:

"SEC. 7. That the owner, consignee, or agent of any imported merchandise may, at the time when he shall make and verify his written entry of such merchandise, but not afterwards, make such addition in the entry to or such deductions from the cost or value given in the invoice, or pro forma invoice, or statement in form of an invoice, which he shall produce with his entry, as in his opinion may raise or lower the same to the actual market value or wholesale price of such merchandise at the time of exportation to the United States in the principal markets of the country from which the same has been imported; and the collector within whose district any merchandise may be imported or entered, whether the same has been actually purchased or procured otherwise than by purchase, shall cause the actual market value or wholesale price of such merchandise to be appraised; and if the appraised value of any article of imported merchandise subject to an ad valorem duty or to a duty based upon or regulated in any manner by the value thereof shall exceed the value declared in the entry by more than ten per centum there shall be levied, collected, and paid, in addition to the duties imposed by law on such merchandise, an additional duty of one per centum of the total appraised value thereof for each one per centum in excess of ten per centum that such appraised value exceeds the value declared in the entry, but the additional duties shall only apply to the particular article or articles in each invoice that are so undervalued, and shall not be imposed upon any article upon which the amount of duty imposed by law on account of the appraised value does not exceed the amount of duty that would be imposed if the appraised value did not exceed the entered value, and shall be limited to twenty-five per centum of the appraised value of such article or articles. Such additional duties shall be construed to be penal and within the purview of sections 5292 and 5293, Revised Statutes, and sections 17 and 18, act June 22, 1874, and further shall be remitted in cases arising from unintentional or manifest clerical error; but these duties shall not be refunded in case of exportation of the merchandise nor shall they be subject to the benefit of drawback: *Provided*, That if the appraised value of any merchandise shall exceed the value declared in the entry by more than thirty-five per centum, except when arising from an unintentional or a manifest clerical error, such entry shall be held to be presumptively fraudulent, and the collector of customs may seize such merchandise and proceed as in the case of forfeiture for violation of the customs laws; and in any legal proceeding that may result from such seizure the undervaluation as shown by the appraisal shall be presumptive evidence of fraud, and the burden of proof shall be on the claimant to rebut the same, and forfeiture shall be adjudged unless he shall rebut

such presumption of fraudulent intent by sufficient evidence. The forfeiture provided for in this section shall only apply to the particular article or articles which are undervalued: *Provided further*, That all additional duties, penalties, or forfeitures applicable to merchandise entered by a duly certified invoice shall be alike applicable to merchandise entered by a pro forma invoice or statement in the form of an invoice. The duty shall not, however, be assessed in any case upon an amount less than the entered value."

Accept, excellency, the renewed assurance of my highest consideration.

ELIHU ROOT.

His Excellency Baron SPECK VON STERNBERG,
Imperial German Ambassador.

I also transmit a report of the Secretary of State, under date of January 9, 1908, explaining the purposes and scope of the proposed amendment of section 7 of the customs administrative act.

I earnestly recommend to the Congress the enactment into law of this amendment at an early date. Besides promoting harmonious relations between the contracting parties to the agreement in question, I regard the proposed legislation as a meritorious measure for the improvement of our customs administrative act, the provisions of which are applicable to importations from all countries alike.

THEODORE ROOSEVELT.

THE WHITE HOUSE, *January 22, 1908.*

THE PRESIDENT:

I have the honor to transmit herewith, for communication to the Congress in your discretion, copies of the new temporary Commercial Agreement between the United States and Germany, with its several annexes, signed at Washington on April 22, 1907, and at Levico, Germany, on May 2, 1907, and the report of the American Commission on which the agreement is based.

The several modifications of the Customs and Consular Regulations of the United States set forth in the diplomatic note from the Secretary of State to the German ambassador at Washington, dated April 22, 1907, annexed to the agreement, relating solely to matters within the power of the Executive to regulate, have been carried into effect and extended, so far as practicable, to all countries alike.

The diplomatic note, however, from the Secretary of State to the German ambassador, dated May 2, 1907, also annexed to the agreement, calls for a recommendation to Congress that certain amendments of the law be made. It reads as follows:

DEPARTMENT OF STATE, *May 2, 1907.*

EXCELLENCY: Referring to the commercial agreement concluded this day between this Government and the Imperial German Government, I have the honor to inform you that the President of the United States authorizes me to state that he will recommend to the Congress the enactment of an amendment of section 7 of the customs administrative act of June 10, 1890, as amended by section 32, act of July 24, 1897, so as to read as follows:

SECTION 7. That the owner, consignee, or agent of any imported merchandise may, at the time when he shall make and verify his written entry of such merchandise, but not afterwards, make such addition in the entry to or such deductions from the cost or value given in the invoice, or pro forma invoice, or statement in form of an invoice, which he shall produce with his entry, as in his opinion may raise or lower

law and to American sense of justice. In the judgment of the most competent experts of the Treasury Department and the Department of Commerce and Labor it was wholly unnecessary for the due collection of the customs revenues, and the attempt to defend it merely illustrates the demoralization which naturally follows from a long-continued course of reliance upon such methods. I accordingly caused the regulations governing this branch of the customs service to be modified so that values are determined upon a hearing in which all the parties interested have an opportunity to be heard and to know the evidence against them. Moreover our Treasury agents are accredited to the government of the country in which they seek information, and in Germany receive the assistance of the quasi-official chambers of commerce in determining the actual market value of goods, in accordance with what I am advised to be the true construction of the law.

These changes of regulations were adapted to the removal of such manifest abuses that I have not felt that they ought to be confined to our relations with Germany, and I have extended their operation to all other countries which have expressed a desire to enter into similar administrative relations.

For the information of the Congress, I transmit herewith the Commercial Agreement referred to, with its several annexes, and the report of the American Commission on which it is based.

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DEPARTMENT OF STATE, *May 2, 1907.*

EXCELLENCY: Referring to the Commercial Agreement concluded this day between this Government and the Imperial German Government, I have the honor to inform you that the President of the United States authorizes me to state that he will recommend to the Congress the enactment of an amendment of section 7 of the customs administrative act of June 10, 1890, as amended by section 32, act of July 24, 1897, so as to read as follows:

"SEC. 7. That the owner, consignee, or agent of any imported merchandise may, at the time when he shall make and verify his written entry of such merchandise, but not afterwards, make such addition in the entry to or such deductions from the cost or value given in the invoice, or pro forma invoice, or statement in form of an invoice, which he shall produce with his entry, as in his opinion may raise or lower the same to the actual market value or wholesale price of such merchandise at the time of exportation to the United States in the principal markets of the country from which the same has been imported; and the collector within whose district any merchandise may be imported or entered, whether the same has been actually purchased or procured otherwise than by purchase, shall cause the actual market value or wholesale price of such merchandise to be appraised; and if the appraised value of any article of imported merchandise subject to an ad valorem duty or to a duty based upon or regulated in any manner by the value thereof shall exceed the value declared in the entry by more than ten per centum there shall be levied, collected, and paid, in addition to the duties imposed by law on such merchandise, an additional duty of one per centum of the total appraised value thereof for each one per centum in excess of ten per centum that such appraised value exceeds the value declared in the entry, but the additional duties shall only apply to the particular article or articles in each invoice that are so undervalued, and shall not be imposed upon any article upon which the amount of duty imposed by law on account of the appraised value does not exceed the amount of duty that would be imposed if the appraised value did not exceed the entered value, and shall be limited to twenty-five per centum of the appraised value of such article or articles. Such additional duties shall be construed to be penal and within the purview of sections 5292 and 5293, Revised Statutes, and sections 17 and 18, act June 22, 1874, and further shall be remitted in cases arising from unintentional or manifest clerical error; but these duties shall not be refunded in case of exportation of the merchandise nor shall they be subject to the benefit of drawback: *Provided*, That if the appraised value of any merchandise shall exceed the value declared in the entry by more than thirty-five per centum, except when arising from an unintentional or a manifest clerical error, such entry shall be held to be presumptively fraudulent, and the collector of customs may seize such merchandise and proceed as in the case of forfeiture for violation of the customs laws; and in any legal proceeding that may result from such seizure the undervaluation as shown by the appraisal shall be presumptive evidence of fraud, and the burden of proof shall be on the claimant to rebut the same, and forfeiture shall be adjudged unless he shall rebut

such presumption of fraudulent intent by sufficient evidence. The forfeiture provided for in this section shall only apply to the particular article or articles which are undervalued: *Provided further*, That all additional duties, penalties, or forfeitures applicable to merchandise entered by a duly certified invoice shall be alike applicable to merchandise entered by a pro forma invoice or statement in the form of an invoice. The duty shall not, however, be assessed in any case upon an amount less than the entered value."

Accept, excellency, the renewed assurance of my highest consideration.

ELIHU ROOT.

His Excellency Baron SPECK VON STERNBERG,
Imperial German Ambassador.

I also transmit a report of the Secretary of State, under date of January 9, 1908, explaining the purposes and scope of the proposed amendment of section 7 of the customs administrative act.

I earnestly recommend to the Congress the enactment into law of this amendment at an early date. Besides promoting harmonious relations between the contracting parties to the agreement in question, I regard the proposed legislation as a meritorious measure for the improvement of our customs administrative act, the provisions of which are applicable to importations from all countries alike.

THEODORE ROOSEVELT.

THE WHITE HOUSE, *January 22, 1908.*

THE PRESIDENT:

I have the honor to transmit herewith, for communication to the Congress in your discretion, copies of the new temporary Commercial Agreement between the United States and Germany, with its several annexes, signed at Washington on April 22, 1907, and at Levico, Germany, on May 2, 1907, and the report of the American Commission on which the agreement is based.

The several modifications of the Customs and Consular Regulations of the United States set forth in the diplomatic note from the Secretary of State to the German ambassador at Washington, dated April 22, 1907, annexed to the agreement, relating solely to matters within the power of the Executive to regulate, have been carried into effect and extended, so far as practicable, to all countries alike.

The diplomatic note, however, from the Secretary of State to the German ambassador, dated May 2, 1907, also annexed to the agreement, calls for a recommendation to Congress that certain amendments of the law be made. It reads as follows:

DEPARTMENT OF STATE, *May 2, 1907.*

EXCELLENCY: Referring to the commercial agreement concluded this day between this Government and the Imperial German Government, I have the honor to inform you that the President of the United States authorizes me to state that he will recommend to the Congress the enactment of an amendment of section 7 of the customs administrative act of June 10, 1890, as amended by section 32, act of July 24, 1897, so as to read as follows:

SECTION 7. That the owner, consignee, or agent of any imported merchandise may, at the time when he shall make and verify his written entry of such merchandise, but not afterwards, make such addition in the entry to or such deductions from the cost or value given in the invoice, or pro forma invoice, or statement in form of an invoice, which he shall produce with his entry, as in his opinion may raise or lower

the same to the actual market value or wholesale price of such merchandise at the time of exportation to the United States in the principal markets of the country from which the same has been imported; and the collector within whose district any merchandise may be imported or entered, whether the same has been actually purchased or procured otherwise than by purchase, shall cause the actual market value or wholesale price of such merchandise to be appraised; and if the appraised value of any article of imported merchandise subject to an ad valorem duty or to a duty based upon or regulated in any manner by the value thereof shall exceed the value declared in the entry by more than ten per centum there shall be levied, collected, and paid, in addition to the duties imposed by law on such merchandise, an additional duty of one per centum of the total appraised value thereof for each one per centum in excess of ten per centum that such appraised value exceeds the value declared in the entry, but the additional duties shall only apply to the particular article or articles in each invoice that are so undervalued, and shall not be imposed upon any article upon which the amount of duty imposed by law on account of the appraised value does not exceed the amount of duty that would be imposed if the appraised value did not exceed the entered value, and shall be limited to twenty-five per centum of the appraised value of such article or articles. Such additional duties shall be construed to be penal and within the purview of sections 5292 and 5293, Revised Statutes, and sections 17 and 18, act June 22, 1874, and further shall be remitted in cases arising from unintentional or manifest clerical error; but these duties shall not be refunded in case of exportation of the merchandise nor shall they be subject to the benefit of drawback: *Provided*, That if the appraised value of any merchandise shall exceed the value declared in the entry by more than thirty-five per centum, except when arising from an unintentional or a manifest clerical error, such entry shall be held to be presumptively fraudulent, and the collector of customs may seize such merchandise and proceed as in the case of forfeiture for violation of the customs laws; and in any legal proceeding that may result from such seizure the undervaluation as shown by the appraisal shall be presumptive evidence of fraud, and the burden of proof shall be on the claimant to rebut the same, and forfeiture shall be adjudged unless he shall rebut such presumption of fraudulent intent by sufficient evidence. The forfeiture provided for in this section shall only apply to the particular article or articles which are undervalued: *Provided further*, That all additional duties, penalties, or forfeitures applicable to merchandise entered by a duly certified invoice shall be alike applicable to merchandise entered by a pro forma invoice or statement in the form of an invoice. The duty shall not, however, be assessed in any case upon an amount less than the entered value.

Accept, excellency, the renewed assurance of my highest consideration.

ELIHU ROOT.

His Excellency Baron SPECK VON STERNBURG,
Imperial German Ambassador.

The text of section 7, as now in force, is as follows, the proposed changes being indicated by brackets for words to be stricken out and italics for those to be inserted:

SEC. 7. That the owner, consignee, or agent of any imported merchandise [which has been actually purchased] may, at the time when he shall make and verify his written entry of such merchandise, but not afterwards, make such addition in the entry to *or such deductions from* the cost or value given in the invoice or pro forma invoice or statement in form of an invoice, which he shall produce with his entry, as in his opinion may raise *or lower* the same to the actual market value or wholesale price of such merchandise at the time of exportation to the United States, in the principal markets of the country from which the same has been imported; [but no such addition shall be made upon entry to the invoice value of any imported merchandise obtained otherwise than by actual purchase;] and the collector within whose district any merchandise may be imported or entered, whether the same has been actually purchased or procured otherwise than by purchase, shall cause the actual market value or wholesale price of such merchandise to be appraised; and if the appraised value of any article of imported merchandise subject to an ad valorem duty or to a duty based upon or regulated in any manner by the value thereof shall exceed the value declared in the entry *by more than ten per centum* there shall be levied, collected, and paid, in addition to the duties imposed by law on such merchandise, an additional duty of one per centum of the total appraised value thereof

for each one per centum *in excess of ten per centum* that such appraised value exceeds the value declared in the entry, but the additional duties shall only apply to the particular article or articles in each invoice that are so undervalued, *and shall not be imposed upon any article upon which the amount of duty imposed by law on account of the appraised value does not exceed the amount of duty that would be imposed if the appraised value did not exceed the entered value*, and shall be limited to [fifty] *twenty-five* per centum of the appraised value of such article or articles. Such additional duties shall [not] be construed to be penal, and *within the purview of sections 5292 and 5293 Revised Statutes and sections 17 and 18, act, June 22, 1874, and further* shall [not] be remitted, [nor payment thereof in any way avoided, except] in cases arising from [a] *unintentional or* manifest clerical error, [nor shall they be refunded] *but these duties shall not be refunded* in case of exportation of the merchandise [or on any other account,] nor shall they be subject to the benefit of drawback: *Provided*, That if the appraised value of any merchandise shall exceed the value declared in the entry by more than [fifty] *thirty-five* per centum, except when arising from *an unintentional or* a manifest clerical error, such entry shall be held to be presumptively fraudulent, and the collector of customs [shall] *may* seize such merchandise and proceed as in case of forfeiture for violation of the customs laws, and in any legal proceeding that may result from such seizure, the undervaluation as shown by the appraisal shall be presumptive evidence of fraud, and the burden of proof shall be on the claimant to rebut the same and forfeiture shall be adjudged unless he shall rebut such presumption of fraudulent intent by sufficient evidence. The forfeiture provided for in this section shall *only* apply to [the whole of the merchandise or the value thereof in the case or package containing] the particular article or articles [in each invoice] which are undervalued: *Provided, further*, That all additional duties, penalties or forfeitures applicable to merchandise entered by a duly certified invoice, shall be alike applicable to merchandise entered by a pro forma invoice, or statement in the form of an invoice, [and no forfeiture or disability of any kind, incurred under the provisions of this section shall be remitted or mitigated by the Secretary of the Treasury.] The duty shall not, however, be assessed in any case upon an amount less than the [invoice or] entered value.

The proposed changes may be summarized and explained briefly as follows:

(1) The right is given to add to the invoice value at the time of entry in the case of consigned goods.

(2) Also the right to deduct from the invoice value at the time of entry for purchased as well as consigned goods.

(3) A margin of 10 per cent of variation is fixed within which additional duties shall not be assessed. The provision follows, therefore, that in the case of undervaluation exceeding 10 per cent, 1 per cent additional duty shall be levied for each additional per cent of value in excess of 10 per cent.

(4) In the case of undervaluation the limit at which the presumption of fraud arises and merchandise is seized by the collector is reduced from 50 per cent to 35 per cent. The Secretary of the Treasury is thereby given the power to remit the additional duty in cases where the absence of fraud is demonstrated to his satisfaction.

Under the existing law, if the goods shall be undervalued more than 50 per cent, the presumption of fraud arises and they are seized by the collector; but even if the importer shall be able to establish the absence of fraud, the Secretary of the Treasury must nevertheless collect the regular and 50 per cent additional duties.

(5) The word "unintentional" is inserted in the description of the clerical errors for which additional duties may be remitted. Under existing law the remedial power of the Secretary of the Treasury is limited to *manifest* clerical errors. The word "unintentional" is inserted in order that errors which are not manifest, but which can be demonstrated to the satisfaction of the Secretary, shall permit the avoidance of additional duty.

(6) Additional duties are to be construed to be penal and within the purview of sections 5292 and 5293 of the Revised Statutes, and sections 17 and 18 of the act of June 22, 1874. The present law provides that additional duties shall not be construed to be penal, and the Secretary of the Treasury is not authorized to refund them. By virtue of the proposed change the Secretary of the Treasury would be authorized to refund such additional duties.

(7) No additional duties are to be assessed on goods subject to specific duty and as to which the regular duty is not changed by reason of the difference between the entered and appraised values; that is, when the advance over the entered value by the appraiser does not increase the rate of duty.

(8) The privilege is given of paying duty on less than the invoice value. This follows from the right to deduct from the invoice value already mentioned.

The foregoing changes were carefully considered and approved by the representative of the Treasury Department on the American Tariff Commission sent to Berlin and have been unanimously recommended for adoption by the Commission in its report.. They are in line with the recommendations for the amendment of section 7 of the customs administrative act made by the Secretary of the Treasury in his letter of February 28, 1906, to the Speaker of the House of Representatives.

I have the honor to express the opinion that the enactment of the proposed amendment to the existing law would not only strengthen the present good understanding between the United States and Germany in respect of their commercial relations, but would promote harmonious trade relations with other powers, without, at the same time, prejudicing in any way the fiscal or economic interests of the United States.

Respectfully submitted.

ELIHU ROOT.

DEPARTMENT OF STATE,
Washington, January 9, 1908.

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA,

A PROCLAMATION.

Whereas the German Government has entered into a Commercial Agreement with the United States in conformity with the provisions of the third section of the tariff act of the United States approved July 24, 1897, by which agreement in the judgment of the President reciprocal and equivalent concessions are secured in favor of the products of the United States;

Therefore, be it known that I, Theodore Roosevelt, President of the United States of America, acting under the authority conferred by said act of Congress, do hereby suspend during the continuance in force of said agreement the imposition and collection of the duties imposed by the first section of said act upon the articles hereinafter specified, being the products of the soil and industry of Germany, and do declare in place thereof the rates of duty provided in the third section of said act to be in force and effect from and after July 1, 1907, as follows:

Argols, or crude tartar, or wine lees, crude, five per centum ad valorem.

Brandies, or other spirits manufactured or distilled from grain or other materials, one dollar and seventy-five cents per proof gallon.

Champagne and all other sparkling wines, in bottles containing not more than one quart and more than one pint, six dollars per dozen; containing not more than one pint each and more than one-half pint, three dollars per dozen; containing one-half pint each or less, one dollar and fifty cents per dozen; in bottles or other vessels containing more than one quart each, in addition to six dollars per dozen bottles on the quantities in excess of one quart, at the rate of one dollar and ninety cents per gallon.

Still wines, and vermouth, in casks, thirty-five cents per gallon; in bottles or jugs, per case of one dozen bottles or jugs containing each not more than one quart and more than one pint, or twenty-four bottles or jugs containing each not more than one pint, one dollar and twenty-five cents per case, and any excess beyond these quantities found in such bottles or jugs shall be subject to a duty of four cents per pint or fractional part thereof, but no separate or additional duty shall be assessed upon the bottles or jugs.

Paintings in oil or water colors, pastels, pen and ink drawings, and statuary, fifteen per centum ad valorem.

In testimony whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the city of Washington this first day of June, A. D. one thousand nine hundred and seven, and of the Independence of the United States the one hundred and thirty-first.

[SEAL.] THEODORE ROOSEVELT.

By the President:

ELIHU ROOT,
Secretary of State.

Commercial Agreement between the United States and Germany.

[Signed at Washington, April 22, 1907; at Levico, May 2, 1907.]

The President of the United States of America, on the one hand, and His Majesty the German Emperor, King of Prussia, in the name of the German Empire, on the other, animated by a desire to adjust the commercial relations between the two countries until a comprehensive commercial treaty can be agreed upon, have decided to conclude a temporary Commercial Agreement, and have appointed as their Plenipotentiaries for that purpose, to wit:

The President of the United States of America, the Honorable Elihu Root, Secretary of State of the United States; and

His Majesty the German Emperor, King of Prussia, His Excellency Baron Speck von Sternburg, His Ambassador

Extraordinary and Plenipotentiary to the United States of America,

Who, after an exchange of their respective full powers, found to be in due and proper form, have agreed upon the following Articles:

ARTICLE I.

In conformity with the authority conferred on the President of the United States in Section 3 of the Tariff Act of the United States approved July 24, 1897, it is agreed on the part of the United States that the following products of the soil and industry of Germany imported into the United States shall, from and after the date when this Agreement shall be put in force, be subject to the reduced Tariff rates provided by said Section 3, as follows:

Argols, or crude tartar, or wine lees, crude, five per centum ad valorem.

Brandies, or other spirits manufactured or distilled from grain or other materials, one dollar and seventy-five cents per proof gallon.

Champagne and all other sparkling wines, in bottles containing not more than one quart and more than one pint, six dollars per dozen; containing not more than one pint each and more than one-half pint, three dollars per dozen; containing one-half pint each or less, one dollar and fifty cents per dozen; in bottles or other vessels containing more than one quart each, in addition to six dollars per dozen bottles on the quantities in excess of one quart, at the rate of one dollar and ninety cents per gallon.

Still wines, and vermuth, in casks, thirty-five cents per gallon; in bottles or jugs, per case of one dozen bottles or jugs containing each not more than one quart and more than one pint, or twenty-four bottles or jugs containing each not more than one pint, one dollar and twenty-five cents per case, and any excess beyond these quantities found in such bottles or jugs shall be subject to a duty of four cents per pint or fractional part thereof, but no separate or additional duty shall be assessed upon the bottles or jugs.

Paintings in oil or water colors, pastels, pen and ink drawings, and statuary, fifteen per centum ad valorem.

ARTICLE II.

It is further agreed on the part of the United States that the modifications of the Customs and Consular Regulations set forth in the annexed diplomatic note, and made a part of the consideration of this Agreement, shall go into effect as soon as possible and not later than from the date when this Agreement shall be put in force.

ARTICLE III.

Reciprocally, the Imperial German Government concedes to the products of the soil and industry of the United States enumerated in the attached list upon their importation into Germany the rates of duty indicated therein.

ARTICLE IV.

The provisions of Articles I and III shall apply not only to products imported directly from the country of one of the contracting parties into that of the other, but also to products which are imported into the respective countries through a third country, so long as such products have not been subject to any further processes of manufacture in that country.

ARTICLE V.

The present Agreement shall apply also to countries or territories which are now or may in the future constitute a part of the Customs territory of either contracting party.

ARTICLE VI.

The present Agreement shall be ratified by His Majesty the German Emperor, King of Prussia, as soon as possible, and upon official notice thereof the President of the United States shall issue his proclamation giving full effect to the respective provisions of this Agreement.

This Agreement shall take effect on July 1, 1907, and remain in force until June 30, 1908. In case neither of the contracting parties shall have given notice six months before the expiration of the above term of its intention to terminate the said Agreement, it shall remain in force until six months from the date when either of the contracting parties shall notify the other of intention its to terminate the same.

Done in duplicate in English and German texts.

In testimony whereof, the Plenipotentiaries above mentioned have subscribed their names hereto at the places and on the datesexpressed under their several signatures.

ELIHU ROOT [SEAL.]
WASHINGTON, *April 22, 1907.*

STERNBURG. [SEAL.]
LEVICO, *May 2, 1907.*

DEPARTMENT OF STATE,
Washington, April 22, 1907.

EXCELLENCY: Referring to the Commercial Agreement signed this day between the Imperial German Government and the Government of the United States, I have the honor to inform you that instructions to the customs and consular officers of the United States and others concerned will be issued to cover the following points and shall remain in force for the term of the aforesaid agreement:

A.

Market value as defined by section 19 of the customs administrative act shall be construed to mean the export price whenever goods, wares, and merchandise are sold wholly for export, or sold in the home market only in limited quantities, by reason of which facts there can not be established a market value based upon the sale of such goods, wares, and merchandise in usual wholesale quantities, packed ready for shipment to the United States.

B.

Statements provided for in section 8 of the customs administrative act are not to be required by consular officers except upon the request of the appraiser of the port, after entry of the goods. The Consular Regulations of 1896, paragraph 674, shall be amended accordingly.

C.

In reappraisement cases, the hearing shall be open and in the presence of the importer or his attorney, unless the Board of Appraisers shall certify to the Secretary of the Treasury that the public interest will suffer thereby; but in the latter case the importer shall be furnished with a summary of the facts developed at the closed hearing upon which the reappraisement is based.

D

The practice in regard to "personal appearance before consul," "original bills," "declaration of name of ship," shall be made uniform in the sense—

1. That the personal appearance before the consular officer shall be demanded only in exceptional cases, where special reasons require a personal explanation.

2. That the original bills are only to be requested in cases where invoices presented to the consular officer for authentication include goods of various kinds that have been purchased from different manufacturers at places more or less remote from the consulate and that these bills shall be returned after inspection by the consular officer.

3. That the declaration of the name of the ship in the invoice shall be dispensed with whenever the exporter at the time the invoice is presented for authentication is unable to name the ship.

Paragraph 678 of such regulations, as amended March 1, 1906, shall be further amended by striking out the words:

Whenever the invoice is presented to be consulated in a country other than the one from which the merchandise is being directly exported to the United States.

And by inserting after the first sentence the following clause:

As place, in which the merchandise was purchased, is to be considered the place where the contract was made, whenever this was done at the place where the exporter has his office.

Paragraph 681 of the Consular Regulations of 1896 relative to "swearing to the invoice" shall be revoked.

E.

Special agents, confidential agents, and others sent by the Treasury Department to investigate questions bearing upon customs administration shall be accredited to the German Government through the Department of State at Washington and the Foreign Office at Berlin, and such agents shall cooperate with the several chambers of commerce located in the territory apportioned to such agents. It is hereby understood that the general principle as to personæ gratæ shall apply to these officials.

F.

The certificates as to value issued by German chambers of commerce shall be accepted by appraisers as competent evidence and be considered by them in connection with such other evidence as may be adduced.

Accept, excellency, the renewed assurance of my highest consideration.

ELIHU ROOT.

His Excellency Baron SPECK VON STERNBURG,
Imperial German Ambassador.

Rates of import duty in Germany.

[The German general tariff mentioned in this list is the customs tariff of December 25, 1902, as formulated by the German customs law of the same day.]

Numbers of the German general tariff.	Articles.	Rate of duty.
		Marks.
1	Rye.....per 100 kilos..	5.00
2	Wheat and spelt.....do....	5.50
3	Barley:	
	Malting barley.....do....	4.00
	Other barley.....do....	1.30
4	Oats.....do....	5.00
7	Maize (Indian corn) and sorghum [Dari].....do....	3.00
10	Rice, not cleaned [*unpoliert*].....do....	4.00
11	Beans for food.....do....	2.00
	Pease, lentils.....do....	1.50
12	Beans for fodder (horse beans, etc.), lupines, vetches.....do....	1.50
15	Linseed, hemp seed.....	Free.
18	Red-clover seed, white-clover seed, and other clover seed.....	Free.
19	Grass seed of all kinds	Free.
ex 45	Grapes:	
	Fresh—	
	Table grapes, sent otherwise than by post in packages weighing up to 5 kilos, inclusive.....per 100 kilos..	4.00
	Other.....do....	10.00
ex 46	Walnuts and hazlenuts, unripe (green) or ripe, even if shelled, ground, or otherwise broken up or simply prepared.....per 100 kilos..	2.00
(ex 47-49)	Other fruit:	
ex 47	Fresh—	
	Apples, pears, quinces—	
	Sent by post in packages weighing not more than 5 kilos.....	Free.
	Imported otherwise—	
	Unpacked or only in sacks of at least 50 kilos gross weight—	
	From September 1 to November 30.....	Free.
	From December 1 to August 31.....per 100 kilos..	2.00
	Otherwise packed—	
	In single covering.....do....	3.20
	In more than one covering.....do....	5.00
	Apricots.....	Free.
	Peaches—	
	Sent by post in packages weighing not more than 5 kilos.....	Free.
	Imported otherwise.....per 100 kilos..	2.00
	Medlars.....	Free.
	Plums of all kinds, cherries, mahaleb cherries [*Weichseln*]—	
	Sent by post in packages weighing not more than 5 kilos.....	Free.
	Imported otherwise—	
	Prunus domestica [*Hauszwetschgen*]—	
	From September 1 to November 30.....	Free.
	From December 1 to August 31.....per 100 kilos..	2.00
	Other plums.....do....	2.00
	Cherries for use in the distillation of spirits, by permission and with control over their use.....	Free.
	Other cherries; mahaleb cherries [*Weichseln*].....per 100 kilos..	1.00
	Hips and sloes and other stone or kernel fruit not mentioned above.....	Free.
	Strawberries—	
	Sent by post in packages weighing not more than 5 kilos.....	Free.
	Imported otherwise.....per 100 kilos..	10.00
	Raspberries, currants, gooseberries, blackberries, bilberries (huckleberries), elderberries, juniper berries, and other edible berries, except cranberries.....	Free.
	Note.—Apples, pears, and quinces, fresh, are treated as unpacked if they are imported loose or in sacks of at least 50 kilos gross weight in vehicles provided with not more than eight compartments. Similarly, apples, pears, and quinces, fresh, are treated as unpacked if imported loose or in sacks of at least 50 kilos gross weight in ships provided with compartments, on condition that the capacity of each compartment is not less than 6 cubic meters. The compartments of vehicles or ships may be carpeted or covered with straw or lined with paper or straw, or may even be formed of layers of straw.	
48	Dried, kiln-dried (cut up and peeled or not)—	
	Apples and pears, including waste capable of use.....per 100 kilos..	4.00
	Apricots and peaches.....do....	4.00
	Plums of all kinds—	
	Loose or in casks or sacks weighing at least 50 kilos gross weight, per 100 kilos.....	4.00
	In boxes weighing at least 10 kilos gross weight.....per 100 kilos..	5.00
	Packed otherwise.....do....	6.00
	Other dried or kiln-dried fruit.....do....	4.00
49	Ground, pulped, powdered, or otherwise broken; also salted, cooked without sugar, or otherwise simply prepared; fermented.....per 100 kilos..	4.00

Rates of import duty in Germany—Continued.

Numbers of the German general tariff.	Articles.	Rate of duty.
		Marks.
ex 51	Oranges, fresh.....per 100 kilos..	3.25
ex 59	Juices of fruits [*Obst*] (except of grape), not fermented, not containing ether or alcohol, not boiled down, or boiled down without the addition of sugar, sterilized or not.....per 100 kilos..	4.00
	(74–76) Timber for building and industrial purposes, not separately mentioned in the general tariff:	
74	Rough or merely cut across with the ax or saw, with or without the bark—	
	Hard.....per 100 kilos.....	.12
	Hard.....or per cubic meter..	1.08
	Soft.....per 100 kilos.....	.12
	Soft.....or per cubic meter..	.72
75	Hewn longitudinally or otherwise prepared or cut up with the ax; also shavings produced by rending and shavings intended for the clarification of liquids produced otherwise than by rending—	
	Hard.....per 100 kilos.....	.24
	Hard.....or per cubic meter..	1.92
	Soft.....per 100 kilos.....	.24
	Soft.....or per cubic meter..	1.44
76	Sawn longitudinally or otherwise prepared, not planed—	
	Hard.....per 100 kilos.....	.72
	Hard.....or per cubic meter..	5.76
	Soft.....per 100 kilos.....	.72
	Soft.....or per cubic meter..	4.32
	Notes to Nos. 75 and 76.	
	Shingle boards grooved by the saw only will pay duty under No. 76 as shingle boards merely sawn.	
	Square timber (baulks, planks, etc.) hewn longitudinally, sawn or otherwise prepared, not planed, having only peg holes, pegs, slits, grooves, or bored holes, will pay conventional duty under Nos. 75 and 76, with a surtax as follows:	
	If the duty is paid by weight, 0.20 mark per 100 kilos.	
	If the duty is paid by volume—	
	Hard wood..... 1.60 marks per cubic meter.	
	Soft wood..... 1.20 marks per cubic meter.	
	Notes to Nos. 74–76.	
	1. Wood for building or industrial purposes, merely steamed (not at the same time colored), as also the same wood impregnated or otherwise chemically treated with the object only of increasing its durability, will pay duty under Nos. 74–76 without a surtax. Colored wood, or wood chemically treated for the purpose of being colored, is subjected to a surtax as follows:	
	If the duty is paid by volume, per cubic meter..... 2.40 marks.	
	If the duty is paid by weight, per 100 kilos—	
	Hard wood..... .30 mark.	
	Soft wood..... .40 mark.	
	2. The duty on wood included under these numbers may be paid either by weight or by measure, at the importer's option.	
81	Wooden blocks for paving:	
	Hard wood.....per 100 kilos.....	.72
	Hard wood.....or per cubic meter..	5.76
	Soft wood.....per 100 kilos.....	.72
	Soft wood.....or per cubic meter..	4.32
	Note.—Wooden paving blocks, steamed, impregnated, or otherwise chemically treated, pay the conventional rates of No. 81, without surtax.	
82	Naves, fellies, spokes, as well as pieces of wood recognizable as roughly shaped for these objects:	
	Of hard wood.....per 100 kilos.....	.72
	Of hard wood.....or per cubic meter..	5.76
	Of soft wood.....per 100 kilos.....	.72
	Of soft wood.....or per cubic meter..	4.32
83	Wood for casks (staves and headings), also pieces of wood recognizable as roughly shaped for these objects, not colored, not planed:	
	Of oak.....per 100 kilos.....	.20
	Of oak.....or per cubic meter..	1.60
	Of other hard wood.....per 100 kilos.....	.30
	Of other hard wood.....or per cubic meter..	2.40
	Of soft wood.....per 100 kilos.....	30
	Of soft wood.....or per cubic meter..	1.80
	Note.—The duty on wood for casks is not affected by mere treatment with the drawing knife or by smoothing the edges with the plane.	
	(ex 100–107) Live stock:	
104	Sheep.....per 100 kilos live weight..	8.00
105	Goats.....	Free.
106	Hogs.....per 100 kilos live weight..	9.00
107	Poultry—	
	Geese.....	Free.
	Fowls of all kinds and other poultry.....per 100 kilos net weight..	4.00

Rates of import duty in Germany—Continued.

Numbers of the German general tariff.	Articles.	Rate of duty.
		Marks.
108	Meat, except bacon, and edible entrails of animals, except those of poultry:	
	Fresh or chilled ..... per 100 kilos..	35.00
	Frozen ..... do....	35.00
	Note.—Hogs, cut up, including the bacon adhering thereto, are dutiable at the conventional rate of 35 marks.	
	Simply prepared ..... per 100 kilos..	35.00
	Prepared for the table ..... do....	75.00
	Notes. 1. Slaughtered animals, fit for consumption, pay the same duty as fresh meat. 2. Fresh and simply prepared meat, free from bone (also tongues, but not edible entrails), is subject to a surtax of 10 per cent. Pickled and smoked hams (fore and hind hams) pay the conventional rate on meat simply prepared, without a surtax.	
ex 110	Poultry:	
	Killed, not prepared, carved up or not ..... per 100 kilos..	14.00
	Larded, or otherwise simply prepared ..... do....	20.00
ex 126	Greases and grease-like fats (hog's lard, goose grease, beef marrow, and other grease-like fats), except oleomargarine ..... per 100 kilos..	10.00
127	Hog's fat and goose fat, raw (not rendered nor pressed), except bacon and intestinal fat; also edible greaves ..... per 100 kilos..	5.00
ex 162	Flour, burned or roasted or not, of grain, except oats ..... do....	10.20
ex 180	Wine and fresh must of grapes, setrilized or not, in casks or tank wagons, of an alcoholic strength of not more than 14 per cent by weight ..... per 100 kilos..	20.00
ex 185	Fruit wine (also fruit must in process of fermentation) in casks ..... per 100 kilos..	3.00
198	Common baker's produce (without the addition of eggs, lard, spices, sugar, or the like) ..... per 100 kilos..	10.20
ex 219	Articles of food or consumption of all sorts (not including beverages) in hermetically-sealed receptacles, unless subject as such to higher duties:	
	Apricot sauce, without addition of sugar or sirup, in tin receptacles, weighing at least 5 kilos ..... per 100 kilos..	5.00
	Preserved tomatoes; olives, whether preserved or not in vinegar, oil, or brine ..... per 100 kilos..	30.00
	Other articles of food or consumption, except milk and cream, in hermetically-sealed receptacles, so far as they are not subject to higher rates of duty as such ..... per 100 kilos..	60.00
225	Pumice stone, emery, Vienna lime (powdered quicklime for polishing or cleaning), tripoli, and similar mineral grinding, polishing, and cleaning substances, raw, ground, or washed:	
	In boxes, glasses, jars, or other packages suitable for retail sale.. per 100 kilos..	2.00
	In other receptacles, also shaped in bricks	Free.
233	Slate:	
	Rough blocks	Free.
	Rough slabs, rough table slates ..... per 100 kilos..	1.00
	Roofing slates ..... do....	.65
	Note.—Slabs of slate more than 20 centimeters thick are to be treated as blocks.	
ex 239	Petroleum, fluid natural mineral tar, brown coal tar oil, peat oil, shale oil, oil from the tar of bog-head or cannel coal, and other mineral oils not otherwise enumerated in the general tariff, crude or refined:	
	Lubricating oils; residues from the distillation of mineral oils, containing paraffin or of a tarry or pitchy nature, the latter provided that they do not sink in water; rosin oil ..... per 100 kilos..	6.00
	Heavy benzine of a specific gravity of more than 0.750 up to 0.770, inclusive, at 15° C., for driving motors, manufactured in inland factories or imported from foreign countries, under control ..... per 100 kilos..	2.00
	Gas oil of a specific gravity of over 0.850 up to 0.880, inclusive, at 15° C., for driving motors, or for the carburation of water gas, manufactured in inland factories or imported from foreign countries, under control .... per 100 kilos..	3.00
	Note.—Petroleum and other refined mineral oils, not specially mentioned, suitable for illuminating purposes, may, at the option of the importer, be assessed for duty according to weight on the basis of 100 kilos, or according to volume, upon the condition that 125 liters, at a temperature of 15° C., are considered to be equivalent to 100 kilos, net weight, of the fluid.	
249	Mineral wax (ozocerite), refined, and ceresin (made from mineral wax, mixed or not with paraffin), in blocks, tablets, or balls; wax stumps [*Wachsstümpfe*] of refined mineral wax and of ceresin ..... per 100 kilos..	10.00
ex 250	Paraffin, crude (paraffin scales, paraffin butter, etc.) or refined, except soft paraffin, per 100 kilos	10.00
251	Soft paraffin ..... per 100 kilos..	8.00
ex 258	Paraffin ointment, vaseline and vaseline ointment (not scented), per 100 kilos gross weight	10.00
259	Axle grease ..... per 100 kilos..	6.00

Rates of import duty in Germany—Continued.

Numbers of the German general tariff.	Articles.	Rate of duty.
		Marks.
260	Other lubricants, manufactured of fats or oils, liquid or solid, molded into shapes or not ..... per 100 kilos gross weight..	7.50
ex 316	Calcium carbide	Free.
373	Casein, casein gum, and similar preparations, so far as they are not included under No. 206 of the general tariff ..... per 100 kilos..	6.00
374	Glue in the rough (delimed bones) ..... do....	3.00
375	Glue of all sorts (except albuminous glue), solid or liquid; gelatin, even colored, per 100 kilos	3.00
ex 385	Licorice juice:	
	Mixed with sugar, honey, oil of aniseed, sal ammoniac, or other flavoring or medicinal ingredients, or made up for retail sale ..... per 100 kilos..	60.00
	Other, raw or purified, even in sticks packed in boxes or other larger coverings serving for the purpose of transportation only	Free.
	(ex 545–547) Leather, half or entirely dressed, whether prepared or not, not otherwise mentioned in the general tariff:	
545	Of a net weight of more than 3 kilos each piece—	
	Entire hides or half hides, with the heads, necks, bellies, and hoofs unseparated: head, neck, and belly pieces and hoofs, as well as horse shields, without regard to the weight of the pieces ..... per 100 kilos...	30.00
	Pig leather, without regard to the weight of the pieces ..... do....	18.00
	Bend leather [*Kernstücke*] ..... do....	33.00
	Note.—Leather, including bend leather, of a net weight of more than 3 kilos per piece, for the manufacture of driving belts, with permit, and under control ..... per 100 kilos..	22.00
ex 546	Of a net weight of from 1 to 3 kilos each piece—	
	Calf, natural color (natural brown) ..... do....	25.00
	Other calf ..... do....	40.00
	(ex 555–556) Boots and shoes of leather of all kinds, including those made from hides with the hair still on and those made from fish or reptile skins:	
556	With soles of materials other than wood—	
	Weighing more than 1,200 grams per pair ..... per 100 kilos..	60.00
	Weighing more than 600 and up to 1,200 grams per pair; boot uppers of leather of all kinds, with elastic insertions, without regard to weight ..... per 100 kilos..	80.00
	Weighing 600 grams or less per pair ..... do....	90.00
	Slippers and house shoes, without regard to weight ..... do....	60.00
	Notes. 1. Linings, trimmings, and ornaments of all kinds (buckles bows, tassels, embroideries, laces etc.), of other materials, including silk, but not including fur, do not affect the tariff treatment. 2. The following are to be treated as slippers and house shoes: Shoes which give no support to the instep or the heel, and are not in any other way (*e. g.*, by lacing, buttons, or elastic sides) adapted for closely fitting the foot. The conventional duty is also applicable to slippers and house shoes with a heel piece, but not to those with a raised heel.	
557	Driving belts and breadths of driving belts of leather of all kinds, as well as of raw hide (without the hair), with or without layers of coarse textiles or felt ..... per 100 kilos..	50.00
ex 560	Saddler's and trunk-maker's wares, as well as other wares not separately mentioned in the general tariff, of leather of all kinds, rawhide (with or without the hair), parchment, bladder, gold-beater's skin, or fish or reptile skin, or entirely or partly covered with such materials; also saddler's and trunk-maker's wares of coarse vegetable textiles or of the rope-maker's wares mentioned under Nos. 484 or 485 of the general tariff, or wares entirely or mainly covered with such materials; all these so far as they are not chargeable with higher duties by reason of their combination with other materials, or do not belong to the classes of paper and paper wares entirely or partly covered with leather, included under Nos. 667 to 669 of the general tariff:	
	Picking straps, sewing and binding laces, leather tapes for dividers [*Flortellriemen*], leather laces for spinning and weaving, pickers, without regard to weight ..... per 100 kilos..	50.00
	Other articles—	
	Of a net weight of 2 kilos and more each—	
	Harness for horses; card backs, card bends (card silvers); card plates for fancy rollers; slips and plates for pickers; sliders (rubbing belts, traveling leather bands) ..... per 100 kilos..	50.00
	Other ..... do....	65.00
	Of a net weight less than 2 kilos each article—	
	Harness for horses; card backs, card bends (card silvers); card plates for fancy rollers; slips and plates for pickers; sliders (rubbing belts, traveling leather bands) ..... per 100 kilos..	55.00
	Other; also leather hangings without regard to weight ..... do....	80.00
561	Glove leather cut out or stamped for gloves ..... do....	125.00
578	India-rubber tires for wheels of vehicles; also tire covers, of textiles impregnated or coated with india rubber or with an internal layer of india rubber, per 100 kilos..	60.00

Rates of import duty in Germany—Continued.

Numbers of the German general tariff.	Articles.	Rate of duty.
		Marks.
ex 580	Textiles or felt impregnated or coated with india rubber or with internal layers of india rubber; india-rubber wares coated with textiles or with yarn wound thereon; all these if the textiles or the yarn do not consist entirely or partly of silk.....per 100 kilos..	100.00
	Textiles in combination with india-rubber threads; tissues of india-rubber threads combined wth threads or yarn; all these if the textiles or the yarn consist entirely or partly of silk or other textile material.....per 100 kilos..	90.00
585	Tubes of hardened india rubber, not further worked.....do....	25.00
586	Other wares of hardened india rubber, not separately mentioned in the general tariff, combined or not with other materials, so far as not falling under higher duties by reason of such combination.....per 100 kilos..	40.00
	(ex 649-650) Paper stock (half stuff for the manufacture of paper and pasteboard), in the form of pulp or solidified, whether bleached, dyed, mixed with mineral substances, glue, etc., or not:	
650	From wood, straw, esparto grass, or other vegetable fiber—	
	Wood pulp (mechanically prepared wood meal, wood grindings), per 100 kilos.....	1.25
	Chemically prepared wood pulp (cellulose); straw, esparto, and other fibrous materials.....per 100 kilos..	1.25
ex 651	Pasteboard, molded (dipped), or couched; also made of sheets of pasteboard stuck together:	
	Cardboard of mechanically or chemically prepared wood pulp; also of wood pulp prepared from steamed wood, rolled hard [*Braunholzpappe*, so-called leather board] strawboard, *Schrenzpappe*, and peat cardboard, and other coarse cardboard not separately mentioned in the general tariff, dyed in the pulp or not.....per 100 kilos..	1.50
653	Yellow straw paper.....do....	3.00
	Very coarse gray blotting paper.....do....	2.00
654	Packing paper dyed in the pulp, glazed on one side or not.....do....	3.00
655	Paper not included under other numbers of the general tariff, including carton paper, even ruled, made like parchment or grained:	
	Packing paper not included under No. 654.....per 100 kilos..	3.00
	Other.....do....	6.00
656	Colored paper, including paper coated with chalk, white lead, or the like, or provided with metallic impressions; varnished paper; paper covered with scales of mica or glass, pounce, or wool flocks; paper provided with painted, applied, or galvanoplastic metallic surfacing; also paper with gilt or silvered edges, per 100 kilos.....	8.00
657	Printed matter, printed by any process, so far as not included in chapter 12 of the general tariff; also "picture paper", including that produced by a copying process on paper and cardboard; also paper or cardboard colored or black edged, or ornamented in any way whatever:	
	Of one color.....per 100 kilos..	6.00
	Of more than one color; also with impressions or edges in colors, gold, or other metals.....per 100 kilos..	6.00
ex 660	Wall paper and wall-paper borders of all kinds, neither gilt, silvered, bronzed, embossed, nor velvety.....per 100 kilos...	12.00
ex 694	Grindstones and whetstones, wholly or partly of carborundum.....do....	12.00
	(ex 737-740) Hollow glass:	
737	Neither molded nor ground, polished, smoothed, cut, etched, or figured—	
	Of natural color.....per 100 kilos..	3.00
	White (or half white) transparent, with or without separate rings of massive white (or half white) glass.....per 100 kilos gross weight.	8.00
	Colored or white nontransparent, or even flashed with colored or white nontransparent glass—	
	Milk, alabaster, and bone glass, white.....per 100 kilos..	10.00
	Other.....do....	15.00
738	With the bottoms only molded, or with the stoppers shaped or ornamented by grinding, molding, etc.—	
	Colored or white nontransparent, or even flashed with colored or white nontransparent glass.....per 100 kilos..	15.00
	Other.....do....	12.00
739	Molded, ground, polished, smooth, cut, engraved, or figured in any other way—	
	Colored or white nontransparent, or even flashed with colored or white nontransparent glass.....per 100 kilos..	15.00
	Other.....do....	12.00
	(ex 741-742) Plate and sheet glass, not separately mentioned in the general tariff, neither ground, polished, cut, figured, ribbed, scolloped, curved, frosted, etched, flashed, cut in facets, nor silvered:	
741	Neither colored nor opaque—	
	Plate glass, cast and blown; so-called crude glass (rough cast plates) more than 5 millimeters thick, ribbed or not.....per 100 kilos..	3.00
	Sheet glass, including "crude" glass (ribbed or not) having a thickness of 5 millimeters or less, if the length and breadth together amount to—	
	120 centimeters or less.....per 100 kilos..	6.00
	More than 120 and up to 200 centimeters.....per 100 kilos gross weight..	8.00
	More than 200 centimeters.....per 100 kilos gross weight..	10.00
ex 742	Bull's-eye glass.....do....	12.00

Rates of import duty in Germany—Continued.

Numbers of the German general tariff.	Articles.	Rate of duty.
		Marks.
758	Glass pendants for chandeliers; glass buttons; all these colored or not, with loops or not ..... per 100 kilos..	12.00
	Note.—Painted, gilt, or silvered glass buttons pay duty under No. 763.	
759	Small glass plates; glass beads, bugles, and scales, even if strung on thread only for purposes of packing and transmission; glass drops (glass tears, Prince Rupert's drops); small glass balls (massive glass drops):	
	White or colored ..... per 100 kilos..	2.00
	Painted, gilt or silvered ..... do....	15.00
760	Glass pastes containing lead or not; artificial gems, and glass corals, not mounted, even if strung on thread only for purposes of packing and transmission:	
	Rough—	
	Glass pastes and artificial gems ..... per 100 kilos..	20.00
	Glass corals ..... do....	15.00
	Worked (ground, etc.) ..... do....	25.00
763	Glass not otherwise mentioned in the general tariff, molded, stamped, ground, polished, smoothed, cut, etched, figured, or not; glass threads and spun glass:	
	Not colored nor opaque ..... per 100 kilos..	12.00
	Colored or opaque ..... do....	15.00
	Painted, gilt or silvered, figured or not by the application or burning in of colors ..... per 100 kilos..	20.00
	(ex 777–843) Iron and iron alloys:	
782	Nonmalleable cast iron, not otherwise mentioned in the general tariff, rough:	
	Weighing, per piece, net weight—	
	More than 100 kilos ..... per 100 kilos..	2.50
	More than 40 up to 100 kilos ..... do....	3.00
	40 kilos or less ..... do....	3.50
797	Axles and parts of railway wheels (including hubs, tires, frames, and rims), railway wheels, sets of railway wheels ..... per 100 kilos..	2.50
800	Construction pieces of malleable iron, painted or not ..... do....	4.50
ex 820	Bolts for fish plates and sleepers, cross-tie bars, clips, hook nails, insulator supports (brackets), rough ..... per 100 kilos..	3.00
	Screws and rivets of more than 13 millimeters shank diameter; nuts and washers for screws; horseshoes, calkins, rough ..... per 100 kilos..	5.00
ex 821	Railway couplings, parts of switches and signals, rough ..... do....	6.00
	Railway buffers, rough ..... do....	3.00
829	Chains (except bicycle chains) and parts thereof:	
	Rough—	
	For towing ..... do....	1.50
	Other ..... do....	5.00
	Worked ..... do....	15.00
ex 839	Springs not otherwise mentioned in the general tariff:	
	Fine (for wigs, gloves, hats, and the like), including all springs, polished, nickeled, lacquered, varnished, or which have undergone any further process of working up other than mere grinding ..... per 100 kilos..	20.00
	Other:	
	Rough ..... do....	6.00
	Merely ground ..... do....	10.00
	(ex 869–880) Copper and copper alloys:	
875	Wire gauze of all kinds for industrial purposes, especially for use in the manufacture of paper, endless or in rolls or pieces, composed of wire, with or without insertions [*Einlagen*] of thread or yarn; drying cylinders for printing establishments [*Vordruckwalzen*], smoothed or ribbed, with or without watermark ..... per 100 kilos..	18.00
ex 891	Phonographs, including electrical machines in combination therewith, per 100 kilos	40.00
ex 894	Combustion and explosion motors for motor cycles, weighing, per piece, 40 kilos or less, net weight ..... per 100 kilos..	75.00
	Steam engines, steam turbines, water turbines; combustion and explosion motors; power (other than electromotive) machinery in combination with pumps (including water engines) or freezing machines; cranes:	
	Weighing, per piece, net weight—	
	Over 500 up to 1,000 kilos ..... per 100 kilos..	11.00
	Over 1,000 up to 2,500 kilos ..... do....	7.50
	Over 2,500 up to 5,000 kilos ..... do....	6.00
	Over 5,000 up to 50,000 kilos ..... do....	5.00
	Over 50,000 up to 100,000 kilos ..... do....	4.50
	Over 100,000 kilos ..... do....	3.50
	Water-pressure engines:	
	Weighing per piece, net weight—	
	Over 1,000 up to 2,500 kilos ..... do....	8.00
	Over 2,500 up to 5,000 kilos ..... do....	6.50
	Over 5,000 up to 50,000 kilos ..... do....	5.50
	Over 50,000 up to 100,000 kilos ..... do....	5.00
	Steam engines combined with hammers, blowing machines (including ventilating machines), or with hoisting machines:	
	Weighing per piece, net weight—	
	Over 5,000 up to 50,000 kilos ..... per 100 kilos..	5.00
	Over 50,000 up to 100,000 kilos ..... do....	4.50

Rates of import duty in Germany—Continued.

Numbers of the German general tariff.	Articles.	Rate of duty.
		Marks.
	Other machines of the kind specified in No. 894 of the general tariff:	
	Weighing, per piece, net weight—	
	Over 1,000 up to 2,500 kilos.....per 100 kilos.	10.00
	Over 2,500 up to 5,000 kilos.....do....	8.00
	Over 5,000 up to 50,000 kilos.....do....	6.00
	Over 50,000 up to 100,000 kilos.....do....	5.00
	Note.—Steam engines for use in shipbuilding, together with the paddle wheels and screw propellers pertaining thereto, are admitted duty free.	
	(ex 913-914) Vehicles, intended to run on rails:	
ex 914	Not combined with motive machinery—	
	Freight cars, covered or not.....per 100 kilos..	3.00
ex 915	Vehicles not intended to run on rails (except water craft), combined with motive machinery (motor cars and motor cycles):	
	Motor cycles—	
	Weighing, each, net weight—	
	50 kilos or less.....per 100 kilos..	100.00
	Over 50 up to 100 kilos.....do....	75.00
	Over 100 up to 250 kilos.....do....	70.00
	Motor cars and motor cycles—	
	Weighing, each, net weight—	
	Over 250 up to 500 kilos.....do....	40.00
	Over 500 up to 1,000 kilos.....do....	25.00
	Over 1,000 kilos.....do....	15.00
	(ex 916-918) Vehicles not intended to run on rails (except water craft), without motive machinery:	
ex 917	Carriages—	
	Four-wheeled, with not more than four fixed seats—	
	Without cover—	
	Weighing, each, net weight—	
	150 kilos or less.....per piece..	60.00
	More than 150 kilos.....do....	100.00
	With cover.....do....	150.00
	Four-wheeled, with more than four fixed seats—	
	Without cover.....do....	150.00
	With cover.....do....	160.00
	Notes.	
	1. Folding seats are not reckoned as fixed seats. The box (driver's seat) is not to be counted as one of the fixed seats.	
	2. Wooden carriage bodies without the trucks shall be treated as wooden wares, according to their character, even if they are fitted with iron mounts; nor shall they be dutiable as passenger carriages, even where the hinge-fastened cover frames and the sloping footboard of the driver's seat (which is securely fastened to the iron clasps traversing the carriage body) have already been fixed in position, or where the wooden panels of the doors have been covered with coarse blocks of wood, or with jute tissue or sheet iron in order to strengthen them or to keep them from splitting.	
	3. Four-wheeled carriages fitted together in the rough pay one-fourth the duty on similar carriages finished. By carriages in the rough are meant those which, though provided with all the parts and fittings necessary in order to enable the carriages to be used (springs, axles, wheels, foreframe, brake, whiffletrees, and parts for attaching the traces, etc.), are neither colored, varnished, polished, painted, nor covered with leather or upholstered (nor contain loose cushions).	
	4. Carriage rugs, lamps, chests, and similar articles imported with carriages and intended to be fitted securely to or otherwise connected with the same, shall be regarded as parts of carriages and not charged duty separately.	
	5. Carriages imported without trucks (chassis), motors, or wheels, and intended for the construction of motor cars, shall be treated as four-wheeled carriages, and shall be dutiable according to the treaty rates under No. 917, if in a finished state, and at one-fourth of those rates if in the rough.	
ex 926	Small arms of all kinds of common metals or of alloys of common metals, except military arms.....per 100 kilos..	60.00
927	Trigger guards, springs, cocks, and barrels, and parts thereof; also other parts of small arms (except locks and breech bolts [*Verschlussstücke*]) of common metals or alloys of common metals:	
	Rough.....per 100 kilos..	6.00
	Worked—	
	Barrels only bored and turned or roughly ground.....do....	10.00
	Other articles.....do....	24.00
928	Locks and breech bolts [*Verschlussstücke*] and parts thereof, for small arms:	
	Roughly worked.....per 100 kilos..	24.00
	Other.....do....	60.00
	Note to Nos. 927 and 928.—Barrels and stocks for small arms with locks, lock cases, or breech bolts [*Verschlussstücke*] fitted to them or packed up with them have to pay duty according to No. 926.	

Rates of import duty in Germany—Continued.

Numbers of the German general tariff.	Articles.	Rate of duty.
		Marks.
929	Watches, including those with chimes:	
	In cases—	
	Of gold.....per piece..	0.80
	Of silver, gilt or not, or provided with gilt rims, pendants or knobs, per piece.....	.60
	Of common metals or alloys thereof, gilt or silvered or not, or provided with gilt or silvered rims, pendants or knobs; of other materials, per piece.....	.40
	Note.—Electrical watches are dutiable under No. 929.	
930	Watch cases:	
	Of gold.....per piece...	.40
	Of silver, of common metals or alloys thereof, gilt or not, or provided with gilt rims, pendants, or knobs; of other materials.....per piece..	.40
	Note.—If watch cases are imported in pieces but ready to be put together, backs will pay half, and rims (together with bezels or not) and bezels each a quarter of the duty on entire watch cases. So-called "false" watch cases and other parts pay duty according to the material of which made.	
	Note to Nos. 929 and 930.—Watches and watch cases plated with gold or silver will pay duty as gilt or silvered.	
931	Mechanism for watches, complete, and rough works.....per piece..	.40
932	Steel mainsprings and balances for watches.....per 100 kilos..	60.00
933	Parts of watches of common metals or alloys thereof not previously mentioned in the general tariff:	
	Watch springs of steel; balances of bronze or brass.....per 100 kilos..	60.00
	Other parts of watches, even gilt or silvered, or plated with gold or silver, or in combination with other materials, in so far as they may not be dutiable at higher rates by reason thereof.....per 100 kilos..	120.00
	Note.—Pendants, rings, and key caps are dutiable under No. 933 when they are obviously intended to form parts of watches.	
937	Organs (with pipes).....per 100 kilos..	20.00
943	Musical boxes:	
	Musical boxes without case, weighing 500 grams, net weight, or less, per piece.....per 100 kilos..	20.00
	Other musical boxes.....do....	20.00
	Apparatus for mechanical repetition of musical pieces.....do....	25.00
	Note.—Parts of musical boxes, obviously recognizable as such, also alarm bells for alarm clocks (without mechanism), are dutiable as musical boxes.	

List referred to in Article Three of Commercial Agreement.

ELIHU ROOT.
STERNBURG.

Correct:

JAMES L. GERRY.
S. N. D. NORTH.
N. I. STONE.

[APPENDIX I.]

Diplomatic Note.

MAY 2, 1907.

EXCELLENCY: Referring to the commercial agreement concluded this day between this Government and the Imperial German Government, I have the honor to inform you that the President of the United States authorizes me to state that he will recommend to the

Congress the enactment of an amendment of section 7 of the customs administrative act of June 10, 1890, as amended by section 32, act of July 24, 1897, so as to read as follows:

SECTION 7. That the owner, consignee, or agent of any imported merchandise may, at the time when he shall make and verify his written entry of such merchandise, but not afterwards, make such addition in the entry to or such deductions from the cost or value given in the invoice, or pro forma invoice, or statement in form of an invoice, which he shall produce with his entry, as in his opinion may raise or lower the same to the actual market value or wholesale price of such merchandise at the time of exportation to the United States in the principal markets of the country from which the same has been imported; and the collector within whose district any merchandise may be imported or entered, whether the same has been actually purchased or procured otherwise than by purchase, shall cause the actual market value or wholesale price of such merchandise to be appraised; and if the appraised value of any article of imported merchandise subject to an ad valorem duty or to a duty based upon or regulated in any manner by the value thereof shall exceed the value declared in the entry by more than ten per centum there shall be levied, collected, and paid, in addition to the duties imposed by law on such merchandise, an additional duty of one per centum of the total appraised value thereof for each one per centum in excess of ten per centum that such appraised value exceeds the value declared in the entry, but the additional duties shall only apply to the particular article or articles in each invoice that are so undervalued, and shall not be imposed upon any article upon which the amount of duty imposed by law on account of the appraised value does not exceed the amount of duty that would be imposed if the appraised value did not exceed the entered value, and shall be limited to twenty-five per centum of the appraised value of such article or articles. Such additional duties shall be construed to be penal and within the purview of sections 5292 and 5293, Revised Statutes, and sections 17 and 18, act June 22, 1874, and further shall be remitted in cases arising from unintentional or manifest clerical error; but these duties shall not be refunded in case of exportation of the merchandise, nor shall they be subject to the benefit of drawback: *Provided*, That if the appraised value of any merchandise shall exceed the value declared in the entry by more than thirty-five per centum, except when arising from an unintentional or a manifest clerical error, such entry shall be held to be presumptively fraudulent, and the collector of customs may seize such merchandise and proceed as in the case of forfeiture for violation of the customs laws; and in any legal proceeding that may result from such seizure the undervaluation as shown by the appraisal shall be presumptive evidence of fraud, and the burden of proof shall be on the claimant to rebut the same, and forfeiture shall be adjudged unless he shall rebut such presumption of fraudulent intent by sufficient evidence. The forfeiture provided for in this section shall only apply to the particular article or articles which are undervalued: *Provided, further*, That all additional duties, penalties, or forfeitures applicable to merchandise entered by a duly certified invoice shall be alike applicable to merchandise entered by a pro forma invoice or statement in the form of an invoice. The duty shall not, however, be assessed in any case upon an amount less than the entered value.

Accept, excellency, the renewed assurance of my highest consideration.

ELIHU ROOT.

His Excellency Baron SPECK VON STERNBURG,
Imperial German Ambassador.

[APPENDIX II.]

[Strike out the words in brackets and insert the words printed in *italics*.]

SEC. 7. That the owner, consignee, or agent of any imported merchandise [which has been actually purchased] may, at the time when he shall make and verify his written entry of such merchandise, but not afterwards, make such addition in the entry to *or such deductions from* the cost or value given in the invoice or pro forma

invoice or statement in form of an invoice, which he shall produce with his entry, as in his opinion may raise *or lower* the same to the actual market value or wholesale price of such merchandise at the time of exportation to the United States, in the principal markets of the country from which the same has been imported; [but no such addition shall be made upon entry to the invoice value of any imported merchandise obtained otherwise than by actual purchase;] and the collector within whose district any merchandise may be imported or entered, whether the same has been actually purchased or procured otherwise than by purchase, shall cause the actual market value or wholesale price of such merchandise to be appraised; and if the appraised value of any article of imported merchandise subject to an ad valorem duty or to a duty based upon or regulated in any manner by the value thereof shall exceed the value declared in the entry *by more than ten per centum* there shall be levied, collected, and paid, in addition to the duties imposed by law on such merchandise, an additional duty of one per centum of the total appraised value thereof for each one per centum *in excess of ten per centum* that such appraised value exceeds the value declared in the entry; but the additional duties shall only apply to the particular article or articles in each invoice that are so undervalued, *and shall not be imposed upon any article upon which the amount of duty imposed by law on account of the appraised value does not exceed the amount of duty that would be imposed if the appraised value did not exceed the entered value,* and shall be limited to [fifty] *twenty-five* per centum of the appraised value of such article or articles. Such additional duties shall [not] be construed to be penal, and *within the purview of sections 5292 and 5293, Revised Statutes, and sections 17 and 18 act June 22, 1874, and further* shall [not] be remitted, [nor payment thereof in any way avoided, except] in cases arising from [a] *unintentional or* manifest clerical error, [nor shall they be refunded] *but these duties shall not be refunded* in case of exportation of the merchandise [or on any other account], nor shall they be subject to the benefit of drawback; *Provided,* That if the appraised value of any merchandise shall exceed the value declared in the entry by more than [fifty] *thirty-five* per centum, except when arising from *an unintentional or* a manifest clerical error, such entry shall be held to be presumptively fraudulent, and the collector of customs [shall] *may* seize such merchandise and proceed as in case or forfeiture for violation of the customs laws, and in any legal proceeding that may result from such seizure, the undervaluation as shown by the appraisal shall be presumptive evidence of fraud, and the burden of proof shall be on the claimant to rebut the same and forfeiture shall be adjudged unless he shall rebut such presumption of fraudulent intent by sufficient evidence. The forfeiture provided for in this section shall *only* apply to [the whole of the merchandise or the value thereof in the case or package containing] the particular article or articles [in each invoice] which are undervalued: *Provided, further,* That all additional duties, penalties, or forfeitures applicable to merchandise entered by a duly certified invoice, shall be alike applicable to merchandise entered by a pro forma invoice, or statement in the form of an invoice, [and no forfeiture or disability of any kind, incurred under the provisions of this section shall be remitted or mitigated by the Secretary of the Treasury.] The duty shall not, however, be assessed in any case upon an amount less than the [invoice or] entered value.

[APPENDIX III.]

[Department Circular, No. 36. 1907. Division of Customs.]

Regulations provided for in the commercial agreement between Germany and the United States.

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, June 1, 1907.

To Collectors and other Officers of the Customs:

In accordance with the commercial agreement signed April 22, 1907, between the Imperial German Government and the Government of the United States the following regulations, which will remain in force for the term of that agreement, are published for your guidance so far as they relate to your duties.

Market value as defined by section 19 of the customs administrative act shall be construed to mean the export price whenever goods, wares, and merchandise are sold wholly for export, or sold in the home market only in limited quantities, by reason of which facts there can not be established a market value based upon the sale of such goods, wares, and merchandise in usual wholesale quantities, packed ready for shipment to the United States.

Statements provided for in section 8 of the customs administrative act are not to be required by consular officers except upon the request of the appraiser of the port, after entry of the goods. The consular regulations of 1896, paragraph 674, shall be amended accordingly.

In reappraisement cases the hearing shall be open and in the presence of the importer or his attorney, unless the Board of Appraisers shall certify to the Secretary of the Treasury that the public interest will suffer thereby; but in the latter case the importer shall be furnished with a summary of the facts developed at the closed hearing upon which the reappraisement is based.

The practice in regard to "personal appearance before consul," "original bills," "declaration of name of ship," shall be made uniform in the sense—

1. That the personal appearance before the consular officer shall be demanded only in exceptional cases, where special reasons require a personal explanation.

2. That the original bills are only to be requested in cases where invoices presented to the consular officer for authentication include goods of various kinds that have been purchased from different manufacturers at places more or less remote from the consulate, and that these bills shall be returned after inspection by the consular officer.

3. That the declaration of the name of the ship in the invoice shall be dispensed with whenever the exporter at the time the invoice is presented for authentication is unable to name the ship.

Paragraph 678 of such regulations, as amended March 1, 1906, shall be further amended by striking out the words:

"Whenever the invoice is presented to be consulated in a country other than the one from which the merchandise is being directly exported to the United States."

And by inserting after the first sentence the following clause:

As place, in which the merchandise was purchased, is to be considered the place where the contract was made, whenever this was done at the place where the exporter has his office.

Paragraph 681 of the consular regulations of 1896 relative to "swearing to the invoice" shall be revoked.

Special agents, confidential agents, and others sent by the Treasury Department to investigate questions bearing upon customs administration shall be accredited to the German Government through the Department of State at Washington and the Foreign Office at Berlin, and such agents shall cooperate with the several chambers of commerce located in the territory apportioned to such agents. It is hereby understood that the general principle as to personæ gratæ shall apply to these officials.

The certificates as to value issued by German chambers of commerce shall be accepted by appraisers as competent evidence and be considered by them in connection with such other evidence as may be adduced.

GEORGE B. CORTELYOU,
Secretary.

[APPENDIX IV.]

Executive order.

The Consular Regulations of 1896 are hereby amended as follows:

The practice in regard to "personal appearance before consul," "original bills," "declaration of name of ship," shall be made uniform in the sense—

1. That the personal appearance before the consular officer shall be demanded only in exceptional cases, where special reasons require a personal explanation.

2. That the original bills are only to be requested in cases where invoices presented to the consular officer for authentication include goods of various kinds that have been purchased from different manufacturers at places more or less remote from the consulate and that these bills shall be returned after inspection by the consular officer.

3. That the declaration of the name of the ship in the invoice shall be dispensed with whenever the exporter at the time the invoice is presented for authentication is unable to name the ship.

Paragraph 678 of such regulations, as amended March 1, 1906, is further amended by striking out the words:

Whenever the invoice is presented to be consulated in a country other than the one from which the merchandise is being directly exported to the United States.

And by inserting after the first sentence the following clause:

As place, in which the merchandise was purchased, is to be considered the place where the contract was made, whenever this was done at the place where the exporter has his office.

So that the entire paragraph shall read as follows:

678. Invoices of merchandise purchased for export to the United States must be produced for certification to the consul of the district at which the merchandise was purchased, or in the district in which it was manufactured, but as a rule consular

officers shall not require the personal attendance at his office of the shipper, purchaser, manufacturer, owner, or his agent, for the purpose of making declarations to invoices, but he shall certify invoices sent to him through the mails or by messenger. As place, in which the merchandise was purchased, is to be considered the place where the contract was made, whenever this was done at the place where the exporter has his office. To conform to the statute which requires that merchandise shall be invoiced at the market value or wholesale price of such merchandise as bought and sold in usual wholesale quantities at the time of exportation to the United States, in the principal markets of the country whence imported, consuls will certify to invoices, the additional cost of transportation from the place of manufacture to the place of shipment.

Paragraph 681 of the Consular Regulations of 1896 relative to "swearing to the invoice" is hereby revoked.

Paragraph 674 of the Consular Regulations of 1896 is amended so that the statements provided for in section 8 of the customs administrative act are not to be required by consular officers, except upon the request of the appraiser of the port after entry of the goods.

THEODORE ROOSEVELT.

THE WHITE HOUSE, *June 1, 1907.*

Report of the American Tariff Commission to Berlin relating to changes in the Customs and Consular Regulations of the United States effected by the temporary Commercial Agreement concluded between the United States and Germany in 1907.

The points raised in the German "Diskussionspunkte" regarding the administration of the United States customs are summarized as follows:

1. Market value.
2. Additional duties.
3. Consigned goods:

(*a*) Prohibition of the right to subsequently increase the value on entry by the importer.

(*b*) Detailed statements of cost of production and as to place of purchase and purchase price.

4. Double procedure for determining the value before the consul and before the appraisers.
5. Prohibition of the right to lower the invoice value at the time of entry with respect to purchased and consigned goods.
6. The rule that the duty must not be assessed upon a value less than that stated in the invoice.
7. Procedure before the customs appraisers; limited defense; no statement of grounds for decision.
8. The rule that the customs duty must also be paid on that part of the consignment which reaches the customs-house in a damaged condition.
9. Prohibition of the free reexportation of goods which have not left the custody of the American customs-house authorities, and on which duty has not yet been paid.
10. Customs treatment of goods sent on approval.
11. Customs treatment of returned goods.
12. Customs treatment of samples brought by commercial travelers.

13. Treatment of goods in the case of doubt as to the declared value (the question of furnishing a bond to secure the delivery of goods).

14. The legalization of the invoices by the consul of the district where the exporter lives and by the consul at the port of shipment.

15. Amount of fee for the legalization of invoices.

16. Personal appearance for legalizing the invoice.

17. The production of the original bills.

18. The second clause of section 678 of the Consular Regulations.

19. Declaration of the name of the ship in the invoice.

20. Swearing to the invoice.

21. The provision under which the price in the United States can be taken into account in determining the market value.

22. The provision under which, with the importation of bronze dust, leaf gold, and leaf metal, every single envelope containing one thirty-second or one sixty-fourth of an English pound, or every small envelope containing twenty-one leaves of metal, must be marked "made in Germany."

23. The method of making inquiries in the country.

24. Interference of the Treasury Department.

25. Arbitration clause.

These propositions naturally arrange themselves in groups, each group covering questions so intimately related as to compel their discussion in connection with each other. Thus points 2, 3, 5, and 6 are covered by a proposed amendment of section 7 of the administrative act of June 10, 1890; points 4, 7, 21, and 23 refer to open hearings before the Board of the General Appraisers, to the German chambers of commerce, and to United States special agents abroad; points 14 to 20, inclusive, involved explanations of the Consular Regulations; points 1, 8 to 13, and 22 required a separate answer for each.

POINT 1.—*Market value.*

The German Commissioners presented arguments in favor of construing the term "market value" to mean the export price.

Section 19 of the customs administrative act provides—

> that whenever imported merchandise is subject to an ad valorem rate of duty, or to a duty based upon or regulated in any manner by the value thereof, the duty shall be assessed upon the actual market value or wholesale price of such merchandise as bought and sold in usual wholesale quantities at the time of exportation to the United States, in the principal markets of the country from whence imported, and in the condition in which such merchandise is there bought and sold for exportation to the United States, or consigned to the United States for sale, including the value of all cartons, cases, crates, boxes, sacks, and coverings of any kind, and all other costs, charges, and expenses incident to placing the merchandise in condition, packed ready for shipment to the United States, and if there be used for covering or holding imported merchandise, whether dutiable or free, any unusual article or form designed for use otherwise than in the *bona fide* transportation of such merchandise to the United States, additional duty shall be levied and collected upon such material or article at the rate to which the same would be subject if separately imported; that the words "value" or "actual market value," whenever used in this act or in any law relating to the appraisement of imported merchandise shall be construed to be the actual market value or wholesale price as defined in this section.

The American Commissioners agreed to recommend that "market value," as above defined, shall be construed to mean the export price, whenever goods, wares, and merchandise are sold *wholly for export,*

or are sold in the home market in limited quantities only, by reason of which facts there can not be established a market value, based upon the sale of such goods, wares, and merchandise "in usual wholesale quantities, packed ready for shipment to the United States."

The crux of the question is the meaning of the words "in the usual wholesale quantities." If there be no usual wholesale quantities in the country of export, except when goods, wares, and merchandise are sold for export, then by force of law the export price becomes the market value as defined by section 19. The recommendation of the American Commissioners is based upon a construction of the law which to them seems proper and sound, and the only construction which permits of any uniformity in the assessment of duty.

POINTS 2, 3, 5, AND 6.—*Additional duty—Consigned goods—Right to deduct as well as add to make market value.*

We agreed to recommend that section 7 of the customs administrative act be amended in the manner indicated in the proposed draft of a treaty of reciprocity, as follows:

SECTION 7. That the owner, consignee, or agent of any imported merchandise may, at the time when he shall make and verify his written entry of such merchandise, but not afterwards, make such addition in the entry to or such deductions from the cost or value given in the invoice, or *pro forma* invoice, or statement in form of an invoice, which he shall produce with his entry, as in his opinion may raise or lower the same to the actual market value or wholesale price of such merchandise at the time of exportation to the United States in the principal markets of the country from which the same has been imported; and the collector within whose district any merchandise may be imported or entered, whether the same has been actually purchased or procured otherwise than by purchase, shall cause the actual market value or wholesale price of such merchandise to be appraised; and if the appraised value of any article of imported merchandise subject to an ad valorem duty or to a duty upon or regulated in any manner by the value thereof shall exceed the value declared in the entry by more than 10 per centum there shall be levied, collected, and paid, in addition to the duties imposed by law on such merchandise, an additional duty of one per centum of the total appraised value thereof, for each one per centum in excess of ten per centum that such appraised value exceeds the value declared in the entry, but the additional duties shall only apply to the particular article or articles in each invoice that are so undervalued, and shall not be imposed upon any article upon which the amount of duty imposed by law on account of the appraised value does not exceed the amount of duty that would be imposed if the appraised value did not exceed the entered value, and shall be limited to 25 per centum of the appraised value of such article or articles. Such additional duties shall be construed to be penal and within the purview of sections 5292 and 5293, Revised Statutes, and sections 17 and 18, act June 22, 1874, and, further, shall be remitted in cases arising from unintentional or manifest clerical error; but these duties shall not be refunded in case of exportation of the merchandise, nor shall they be subject to the benefit of drawback: *Provided*, That if the appraised value of any merchandise shall exceed the value declared in the entry by more than 35 per centum, except when arising from an unintentional or a manifest clerical error, such entry shall be held to be presumptively fraudulent, and the collector of customs may seize such merchandise and proceed as in the case of forfeiture for violation of the customs laws; and in any legal proceeding that may result from such seizure the undervaluation as shown by the appraisal shall be presumptive evidence of fraud, and the burden of proof shall be on the claimant to rebut the same, and forfeiture shall be adjudged unless he shall rebut such presumption of fraudulent intent by sufficient evidence. The forfeiture provided for in this section shall only apply to the particular article or articles which are undervalued: *Provided further*, That all additional duties, penalties, or forfeitures applicable to merchandise entered by a duly certified invoice shall be alike applicable to merchandise entered by a *pro forma* invoice or statement in the form of an invoice. The duty shall not, however, be assessed in any case upon an amount less than the entered value.[a]

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[a] Section 7 reads as follows in the existing law:

"SEC. 7. That the owner, consignee, or agent of any imported merchandise which has been actually purchased may, at the time when he shall make and verify his

This recommendation covers the following changes in the law:

1. The right to add on entry to make market value as to consigned goods.

2. The right to deduct from the invoice value at the time of entry, as to both consigned and purchased goods.

3. A 10 per cent margin within which additional duties shall not be levied.

4. Reducing the 50 per cent limit, at which point the presumption of fraud arises and merchandise is seized by the collector, to 35 per cent.

5. Granting to the Secretary of the Treasury the right to remit additional duties when it has been established that undervaluation was due to unintentional error.

6. The provision that additional duties shall be construed to be penal and within the purview of section 5292 of the Revised Statutes, by virtue of which the Secretary of the Treasury is authorized to refund them in cases where the absence of fraud has been established to his satisfaction.

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written entry of such merchandise, but not afterwards, make such addition in the entry to the cost or value given in the invoice or pro forma invoice or statement in form of an invoice, which he shall produce with his entry, as in his opinion may raise the same to the actual market value or wholesale price of such merchandise at the time of exportation to the United States, in the principal markets of the country from which the same has been imported; but no such addition shall be made upon entry to the invoice value of any imported merchandise obtained otherwise than by actual purchase; and the collector within whose district any merchandise may be imported or entered, whether the same has been actually purchased or procured otherwise than by purchase, shall cause the actual market value or wholesale price of such merchandise to be appraised; and if the appraised value of any article of imported merchandise subject to an ad valorem duty or to a duty based upon or regulated in any manner by the value thereof shall exceed the value declared in the entry, there shall be levied, collected, and paid, in addition to the duties imposed by law on such merchandise, an additional duty of one per centum of the total appraised value thereof for each one per centum that such appraised value exceeds the value declared in the entry, but the additional duties shall only apply to the particular article or articles in each invoice that are so undervalued, and shall be limited to fifty per centum of the appraised value of such article or articles. Such additional duties shall not be construed to be penal, and shall not be remitted, nor payment thereof in any way avoided, except in cases arising from a manifest clerical error, nor shall they be refunded in case of exportation of the merchandise, or on any other account, nor shall they be subject to the benefit of drawback: *Provided*, That if the appraised value of any merchandise shall exceed the value declared in the entry by more than fifty per centum, except when arising from a manifest clerical error, such entry shall be held to be presumptively fraudulent, and the collector of customs shall seize such merchandise and proceed as in case of forfeiture for violation of the customs laws, and in any legal proceeding that may result from such seizure, the undervaluation as shown by the appraisal shall be presumptive evidence of fraud, and the burden of proof shall be on the claimant to rebut the same and forfeiture shall be adjudged unless he shall rebut such presumption of fraudulent intent by sufficient evidence. The forfeiture provided for in this section shall apply to the whole of the merchandise or the value thereof in the case or package containing the particular article or articles in each invoice which are undervalued: *Provided further*, That all additional duties, penalties or forfeitures, applicable to merchandise entered by a duly certified invoice, shall be alike applicable to merchandise entered by a pro forma invoice or statement in the form of an invoice, and no forefeiture or disability of any kind, incurred under the provisions of this section shall be remitted or mitigated by the Secretary of the Treasury. The duty shall not, however, be assessed in any case upon an amount less than the invoice or entered value."

7. Preventing the assessment of additional duties on goods subject to specific duty in all cases where the rate of duty is not changed by reason of the fact that the value found by the appraiser is greater than the entered value.

8. The privilege of paying duty on less than the entered value.

All of these propositions, with two exceptions, have been discussed in Congress and in published hearings before the Ways and Means Committee. The exceptions are:

1. Reducing to 35 per cent the 50 per cent limit, at which the presumption of fraud arises and merchandise is seized by customs officers.

2. Providing that additional duties be construed to be penal, thereby giving to the Secretary of the Treasury the power to remit in the absence of fraud.

In the practical administration of section 7 it more frequently than not involves the assessment of additional duty upon an entirely innocent and trustworthy importer. Although the fact may be established to the satisfaction of the Secretary of the Treasury that the importer acted in entire good faith in stating the value of his merchandise and that such statement was the result of error, nevertheless the additional duties must be assessed and collected. The Secretary of the Treasury has absolutely no discretion in the matter. Thus, if the merchandise be unwittingly or in good faith undervalued 50 per cent, the Treasury Department collects the regular duty and 50 per cent additional, although the Secretary may be perfectly satisfied that no fraud was intended. Numerous instances appear in the files of the Treasury Department. The recommendation has heretofore been made to Congress to increase the seizure line to 100 per cent, which would place the Secretary in the position of collecting the regular duty and the value of the goods as well.

As thus amended section 7 would provide for the collection of no additional duty short of 100 per cent undervaluation.

The amount of the penal duties would not exceed 25 per cent. This would inevitably mark a limit of 35 per cent for the presumption of fraud to arise. By this lowering of the fraud line the remedial powers of the Secretary of the Treasury would be set in motion and a limit fixed beyond which no additional duties could be assessed. The unfortunate individual who acts in good faith, and is unable to establish the fact, can not be mulcted in damages beyond the point of 25 per cent, as he undoubtedly often is under the present law.

One further proposition remains under these points, namely, the statements of cost under section 8 of the customs administrative act. These statements require the expenditure of a great deal of time and energy on the part of German exporters; they contemplate the divulgence of trade secrets of the utmost importance and value to the manufacturer, and they are only of importance to the appraisers of merchandise. We therefore agreed to recommend that the Consular Regulations, containing the instructions of the Department of State to consular officers, be so amended that the statements required by section 8 of the customs administrative act need not be exacted, except upon the request of the appraiser of the port after entry of the goods.

POINTS 4, 7, 21, AND 23.—*Procedure before customs appraisers; limited defense; grounds of decision—Double procedure for determining the value before the consul and the Board of General Appraisers—Price in the United States taken into account in determining market value—Method of making inquiries in the country.*

The question of open hearings was very fully argued when the negotiations were pending in Washington for the arrangement of the provisorium. We agreed to recommend the renewal of the order then made by the Secretary of the Treasury, with a slight modification to insure its effectiveness, it being our judgment that the advantage or disadvantage of the open hearing can only be ascertained by actual practice. The regulation suggested is intended in good faith to make a trial of a procedure which must in its nature be experimental at first, it never having been invoked in our practice. No fair-minded man can approve of a decision based upon evidence not subject to the enlightening influence of cross-examination. We agreed to a recommendation in this behalf in order that the open hearing may be given a trial.

The appraisers are clothed by law with authority to fix and determine values. No consular officer has any power in this respect. Much objection is raised by German exporters because they are obliged to prove values before consular officers. It may be said in reply that this procedure offers to exporters an opportunity to submit testimony as to values without appearing before the appraiser or the Board of Appraisers. The information furnished the consul is transmitted to the appraiser and is considered in connection with other evidence. Therefore it did not seem wise from the German point of view, or necessary from the American, to recommend any change.

Much stress was laid upon the certificates of market value issued by the German chambers of commerce. These institutions are quasi-governmental corporations, in that under the imperial law all manufacturers are compelled to join them; the question of membership is in no sense a matter of election, and dues are collected as are other taxes. While the Government does not exercise direct control, it maintains a certain supervision, and any dereliction on the part of a chamber results in the revocation of its charter.

While recognizing the high character of these bodies, their certificates can not in the nature of things be accepted as final and conclusive. No testimony, whatever its source or character, that would safeguard itself from cross-examination is entitled to full faith and credence; but the certificates of these official chambers of commerce should be considered by appraisers in connection with other competent evidence.

Many proper objections were raised to the present status of United States Treasury special agents. No German official works along similar lines in the United States unless duly accredited to our Government.

Provided our agents are similarly accredited, the German Government is willing that they shall continue to work here, cooperating with chambers of commerce and exercising the privilege of investigating the correctness of certificates of value issued by these chambers

We therefore agreed to recommend that—

1. In reappraisement cases the hearing shall be open and in the presence of the importer or his attorney, unless the Board shall certify to the Secretary of the Treasury that the public interest will suffer thereby; but in the latter case the importer shall be furnished with a summary of the facts developed at the closed hearing and upon which the reappraisement is based.

2. Special agents, confidential agents, or others sent by the Treasury Department to investigate questions relating to customs administration shall be accredited to the German Government, through the State Department at Washington and the foreign office at Berlin, and such agents shall cooperate with the several German chambers of commerce located in the territory apportioned to each.

3. The certificates as to value issued by such chambers of commerce shall be accepted by appraisers as competent evidence, and shall be considered by them in connection with such other competent evidence as may be adduced.

POINT 8.—*The payment of duty on damaged goods.*

Under the German law, when merchandise arrives at a frontier port in a damaged condition duties are collected on the merchandise as waste material, or the damaged portion of the shipment is sold for the benefit of the importer. It was pointed out by the German commission that goods, wares, and merchandise coming within the purview of section 23 of the United States customs administrative act are sold for the benefit of the United States. Provision is made, under section 23, for the abandonment of 10 per cent of the merchandise as damaged, and no duties are paid thereon. The Revised Statutes, in sections 2928 and 2984, provide for the remission or abatement of duties on goods damaged by casualty or as the result of a wreck. We have, therefore, no recommendation to make, inasmuch as the practice now in vogue is substantially equitable.

POINT 9.—*The prohibition of the free reexportation of goods in custody of the customs.*

It was shown to the German commissioners that no such prohibition existed, but that on the contrary the Revised Statutes of the United States expressly anthorize the reexportation of merchandise remaining in customs' custody, and that the duties, if paid, are refunded; in view of which facts no further discussion of the question was necessary.

POINTS 10 AND 11.—*Customs treatment of goods sent on approval, and returned goods.*

The practice in Germany with regard to goods, wares, and merchandise sent on approval is to authorize such goods to be delivered under bond, and if not sold the goods may be reexported and the bond canceled. With respect to goods which are merely imported subject to approval, the German practice is such as to warrant the reexportation of the goods, if the same are not up to the requirements or are otherwise than ordered. In reply it was pointed out that the

law in our own country did not specifically authorize the importation of goods subject to approval; but the actual practice was that any kind of merchandise could be imported and placed in warehouse, samples withdrawn, and if the samples were such as to indicate that the goods were not up to the standard the goods could be reexported. So far as works of art are concerned, the provisions of paragraph 701 of the tariff act are very liberally construed, and the American commissioners therefore felt that no amelioration of present conditions was necessary.

POINTS 12, 13, 22, AND 24.—*Customs treatment of travelers' samples—Delays in securing delivery of goods—Marking imported merchandise with country of origin—Interference of the Treasury Department.*

These propositions required merely an explanation of the law and regulations which govern the American practice.

POINT 25.—*Arbitration clause.*

In many of the treaties negotiated with other countries, Germany has secured the insertion of a provision looking to the appointment of boards of arbitration in cases of dispute. Under the American practice the courts are open to all—citizens and foreigners—alike; the rulings of the Board of General Appraisers are regarded as entirely unprejudiced, and appeals from its decisions lie to the courts; and the establishment of arbitration boards would dispense with established tribunals, which are entirely satisfactory; and therefore no recommendation under this point is made.

POINTS 14 TO 20.—*Consular invoices.*

The questions presented under these numbers were substantially raised at the time the provisorium was discussed, and for the purpose of perpetuating the agreements then made, in a manner which shall be clearly understood, the following recommendations were agreed upon:

1. That paragraph 678 of the Consular Regulations of 1896 as amended be further amended by striking out all after the words "place of shipment" and by inserting after the first sentence the following clause:

As place, in which the merchandise was purchased, is to be considered the place where the contract was made, whenever this was done at the place where the exporter has his office.

2. That paragraph 681, Consular Regulations, 1896, be revoked.

3. That the practice authorized by the Consular Regulations with respect to "personal appearance before consul, original bills, and declaration of name of ship" be made uniform in the sense—

1. That the personal appearance before the consul shall be demanded only in exceptional cases, where special reasons require a personal explanation.

2. That the original bills are only to be requested in cases where invoices presented to the consul for authentication include goods of various kinds that have been purchased from different manufacturers at places more or less remote from the consulate, and that these bills shall be returned after inspection by the consul.

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CONSTITUTION OF THE STATE OF OKLAHOMA.

PREAMBLE.

Invoking the guidance of Almighty God, in order to secure and perpetuate the blessing of liberty; to secure just and rightful government; to promote our mutual welfare and happiness, we, the people of the State of Oklahoma, do ordain and establish this constitution.

ARTICLE I.

Federal relations.

SECTION 1. The State of Oklahoma is an inseparable part of the Federal Union, and the Constitution of the United States is the supreme law of the land.

SEC. 2. Perfect toleration of religious sentiment shall be secured, and no inhabitant of the State shall ever be molested in person or property on account of his or her mode of religious worship; and no religious test shall be required for the exercise of civil or political rights. Polygamous or plural marriages are forever prohibited.

SEC. 3. The people inhabiting the State do agree and declare that they forever disclaim all right and title in or to any unappropriated public lands lying within the boundaries thereof, and to all lands lying within said limits owned or held by any Indian, tribe, or nation; and that until the title to any such public land shall have been extinguished by the United States, the same shall be and remain subject to the jurisdiction, disposal, and control of the United States. Land belonging to citizens of the United States residing without the limits of the State shall never be taxed at a higher rate than the land belonging to residents therof. No taxes shall be imposed by the State on lands or property belonging to or which may hereafter be purchased by the United States or reserved for its use.

SEC. 4. The debts and liabilities of the Territory of Oklahoma are hereby assumed, and shall be paid by the State.

SEC. 5. Provisions shall be made for the establishment and maintenance of a system of public schools, which shall be open to all the children of the State and free from sectarian control; and said schools shall always be conducted in English: *Provided*, That nothing herein shall preclude the teaching of other languages in said public schools: *And provided further*, That this shall not be construed to prevent the establishment and maintenance of separate schools for white and colored children.

SEC. 6. The State shall never enact any law restricting or abridging the right of suffrage on account of race, color, or previous condition of servitude.

SEC. 7. The manufacture, sale, barter, giving away, or otherwise furnishing, except as hereinafter provided, of intoxicating liquors within those parts of the State heretofore known as the Indian Territory and the Osage Indian Reservation, and within any other parts of the State which existed as Indian reservations on the 1st day of January, 1906, is prohibited for a period of twenty-one years from the date of the admission of the State into the Union, and thereafter until the people of the State shall otherwise provide by amendment of this constitution and proper State legislation. Any person, individual or corporate, who shall manufacture, sell, barter, give away, or otherwise furnish any intoxicating liquor of any kind, including beer, ale, and wine, contrary to provisions of this section, or who shall, within the above-described portions of the State, advertise for sale or solicit the purchase of any such liquors, or who shall ship or in any way convey such liquors from other parts of the State into the portions hereinbefore described, shall be punished, on conviction thereof, by fine not less than $50 and by imprisonment not less than thirty days for each offense: *Provided*, That the legislature may provide by law for one agency under the supervision of the State in each incorporated town of not less than 2,000 population in the portions of the State hereinbefore described; and if there be no incorporated town of 2,000 population in any county in said portions of the State, such county shall be entitled to have one such agency for the sale of such liquors for medicinal purposes; and for the sale, for industrial purposes, of alcohol which shall have been denaturized by some process approved by the United States Commissioner of Internal Revenue; and for the sale of alcohol for scientific purposes to such scientific institutions, universities, and colleges as are authorized to procure the same free of tax under the laws of the United States; and for the sale of such liquors to any apothecary who shall have executed an approved bond, in a sum not less than $1,000, conditioned that none of such liquors shall be used or disposed of for any purpose other than in the compounding of prescriptions or other medicines, the sale of which would not subject him to the payment of the special tax required of liquor dealers by the United States, and the payment of such special tax by any person within the parts of the State hereinabove defined shall constitute prima facie evidence of his intention to violate the provisions of this section. No sale shall be made except upon the sworn statement of the applicant in writing setting forth the purpose for which the liquor is used, and no sale shall be made for medicinal purposes except sales to apothecaries as hereinabove provided unless such statement shall be accompanied by a bona fide prescription signed by a regular practicing physician, which prescription shall not be filled more than once. Each sale shall be duly registered and the register thereof, together with the affidavits and prescriptions pertaining thereto, shall be open to inspection by any officer or citizen of the State at all times during business hours. Any person who shall knowingly make a false affidavit for the purpose aforesaid shall be deemed guilty of perjury. Any physician who shall prescribe any such liquor, except for the treatment of disease which,

after his own personal diagnosis, he shall deem to require such treatment, shall, upon conviction thereof, be punished for each offense by fine of not less than $200, or by imprisonment for not less than thirty days, or by both such fine and imprisonment; and any person connected with any such agency who shall be convicted of making any sale or other disposition of liquor contrary to these provisions, shall be punished by imprisonment for not less than one year and one day. Upon the admission of the State into the Union these provisions shall be immediately enforcible in the courts of the State.

ARTICLE II.

Bill of rights.

SECTION 1. All political power is inherent in the people; and government is instituted for their protection, security, and benefit, and to promote their general welfare; and they have the right to alter or reform the same whenever the public good may require it: *Provided*, Such change be not repugnant to the Constitution of the United States.

SEC. 2. All persons have the inherent right to life, liberty, the pursuit of happiness, and the enjoyment of the gains of their own industry.

SEC. 3. The people have the right peaceably to assemble for their own good, and to apply to those invested with the powers of government for redress of grievances by petition, address, or remonstrance.

SEC. 4. No power, civil or military, shall ever interfere to prevent the free exercise of the right of suffrage by those entitled to such right.

SEC. 5. No public money or property shall ever be appropriated, applied, donated, or used, directly or indirectly, for the use, benefit, or support of any sect, church, denomination, or system of religion, or for the use, benefit, or support of any priest, preacher, minister, or other religious teacher or dignitary, or sectarian institution as such.

SEC. 6. The courts of justice of the State shall be open to every person, and speedy and certain remedy afforded for every wrong and for every injury to person, property, or reputation; and right and justice shall be administered without sale, denial, delay, or prejudice.

SEC. 7. No person shall be deprived of life, liberty, or property, without due process of law.

SEC. 8. All persons shall be bailable by sufficient sureties, except for capital offenses when the proof of guilt is evident, or the presumption thereof is great.

SEC. 9. Excessive bail shall not be required, nor excessive fines imposed, nor cruel or unusual punishments inflicted.

SEC. 10. The privilege of the writ of habeas corpus shall never be suspended by the authorities of this State.

SEC. 11. Every person elected or appointed to any office or employment of trust or profit under the laws of the State, or under any ordinance of any municipality thereof, shall give personal attention to the duties of the office to which he is elected or appointed.

SEC. 12. No member of Congress from this State, or person holding any office of trust or profit under the laws of any other State, or of

the United States, shall hold any office of trust or profit under the laws of this State.

SEC. 13. Imprisonment for debt is prohibited, except for the non-payment of fines and penalties imposed for the violation of law.

SEC. 14. The military shall be held in strict subordination to the civil authorities. No soldier shall be quartered in any house, in time of peace, without the consent of the owner, nor in time of war, except in a manner to be prescribed by law.

SEC. 15. No bill of attainder, ex post facto law, nor any law impairing the obligation of contracts, shall ever be passed. No conviction shall work a corruption of blood or forfeiture of estate: *Provided*, That this provision shall not prohibit the imposition of pecuniary penalties.

SEC. 16. Treason against the State shall consist only in levying war against it or in adhering to its enemies, giving them aid and comfort. No person shall be convicted of treason, unless on the testimony of two witnesses to the same overt act, or on confession in open court.

SEC. 17. No person shall be prosecuted criminally in courts of record for felony or misdemeanor otherwise than by presentment or indictment or by information. No person shall be prosecuted for a felony by information without having had a preliminary examination before an examining magistrate, or having waived such preliminary examination. Prosecutions may be instituted in courts not of record upon a duly verified complaint.

SEC. 18. A grand jury shall be composed of 12 men, any 9 of whom concurring may find an indictment or true bill. A grand jury shall be convened upon the order of a judge of a court having the power to try and determine felonies, upon his own motion; or such grand jury shall be ordered by such judge upon the filing of a petition therefor signed by 100 resident taxpayers of the county; when so assembled such grand jury shall have power to investigate and return indictments for all character and grades of crime, and such other powers as the legislature may prescribe: *Provided*, That the legislature may make the calling of a grand jury compulsory.

SEC. 19. The right of trial by jury shall be and remain inviolate, and a jury for the trial of civil and criminal cases in courts of record, other than county courts, shall consist of 12 men; but in county courts and courts not of record a jury shall consist of 6 men. This section shall not be so construed as to prevent limitations being fixed by law upon the right of appeal from judgments of courts not of record in civil cases concerning causes of action involving less than $20. In civil cases, and in criminal cases less than felonies, three-fourths of the whole number of jurors concurring shall have power to render a verdict. In all other cases the entire number of jurors must concur to render a verdict. In case a verdict is rendered by less than the whole number of jurors, the verdict shall be in writing and signed by each juror concurring therein.

SEC. 20. In all criminal prosecutions the accused shall have the right to a speedy and public trial by an impartial jury of the county in which the crime shall have been committed: *Provided*, That the venue may be changed to some other county of the State, on the application of the accused, in such manner as may be prescribed by law. He shall be informed of the nature and cause of the accusation

against him and have a copy thereof, and be confronted with the witnesses against him, and have compulsory process for obtaining witnesses in his behalf. He shall have the right to be heard by himself and counsel; and in capital cases, at least two days before the case is called for trial, he shall be furnished with a list of the witnesses that will be called in chief, to prove the allegations of the indictment or information, together with their post-office addresses.

SEC. 21. No person shall be compelled to give evidence which will tend to incriminate him, except as in this constitution specifically provided; nor shall any person, after having been once acquitted by a jury, be again put in jeopardy of life or liberty for that of which he has been acquitted. Nor shall any person be twice put in jeopardy of life or liberty for the same offense.

SEC. 22. Every person may freely speak, write, or publish his sentiments on all subjects, being responsible for the abuse of that right; and no law shall be passed to restrain or abridge the liberty of speech or of the press. In all criminal prosecutions for libel, the truth of the matter alleged to be libelous may be given in evidence to the jury, and if it shall appear to the jury that the matter charged as libelous be true, and was written or published with good motives and for justifiable ends, the party shall be acquitted.

SEC. 23. No private property shall be taken or damaged for private use, with or without compensation, unless by consent of the owner, except for private ways of necessity, or for drains and ditches across lands of others for agricultural, mining, or sanitary purposes, in such manner as may be prescribed by law.

SEC. 24. Private property shall not be taken or damaged for public use without just compensation. Such compensation, irrespective of any benefit from any improvements proposed, shall be ascertained by a board of commissioners of not less than three free-holders, in such manner as may be prescribed by law. The commissioners shall not be appointed by any judge or court without reasonable notice having been served upon all parties in interest. The commissioners shall be selected from the regular jury list of names prepared and made as the legislature shall provide. Any party aggrieved shall have the right of appeal, without bond, and trial by jury in a court of record. Until the compensation shall be paid to the owner, or into court for the owner, the property shall not be disturbed, or the proprietary rights of the owner divested. When possession is taken of property condemned for any public use the owner shall be entitled to the immediate receipt of the compensation awarded, without prejudice to the right of either party to prosecute further proceedings for the judicial determination of the sufficiency or insufficiency of such compensation. The fee of land taken by common carriers for right of way, without the consent of the owner, shall remain in such owner subject only to the use for which it is taken. In all cases of condemnation of private property for public or private use the determination of the character of the use shall be a judicial question.

SEC. 25. The legislature shall pass laws defining contempts and regulating the proceedings and punishment in matters of contempt: *Provided*, That any person accused of violating or disobeying, when not in the presence or hearing of the court, or judge sitting as such, any order of injunction, or restraint, made or entered by any court

or judge of the State shall, before penalty or punishment is imposed, be entitled to a trial by jury as to the guilt or innocence of the accused. In no case shall a penalty or punishment be imposed for contempt, until an opportunity to be heard is given.

SEC. 26. The right of a citizen to keep and bear arms in defense of his home, person, or property, or in aid of the civil power, when thereunto legally summoned, shall never be prohibited; but nothing herein contained shall prevent the legislature from regulating the carrying of weapons.

SEC. 27. Any person having knowledge or possession of facts that tend to establish the guilt of any other person or corporation charged with an offense against the laws of the State, shall not be excused from giving testimony or producing evidence, when legally called upon so to do, on the ground that it may tend to incriminate him under the laws of the State; but no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may so testify or produce evidence.

SEC. 28. The records, books, and files of all corporations shall be, at all times, liable and subject to the full visitorial and inquisitorial powers of the State, notwithstanding the immunities and privileges in this bill of rights secured to the persons, inhabitants, and citizens thereof.

SEC. 29. No person shall be transported out of the State for any offense committed within the State, nor shall any person be transported out of the State for any purpose, without his consent, except by due process of law; but nothing in this provision shall prevent the operation of extradition laws, or the transporting of persons sentenced for crime to other States for the purpose of incarceration.

SEC. 30. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches or seizures shall not be violated; and no warrant shall issue but upon probable cause supported by oath or affirmation, describing as particularly as may be the place to be searched and the person or thing to be seized.

SEC. 31. The right of the State to engage in any occupation or business for public purposes shall not be denied nor prohibited, except that the State shall not engage in agriculture for any other than educational and scientific purposes and for the support of its penal, charitable, and educational institutions.

SEC. 32. Perpetuities and monopolies are contrary to the genius of a free government, and shall never be allowed, nor shall the law of primogeniture or entailments ever be in force in this State.

SEC. 33. The enumeration in this constitution of certain rights shall not be construed to deny, impair, or disparage others retained by the people.

ARTICLE III.

Suffrage.

SECTION 1. The qualified electors of the State shall be male citizens of the United States, male citizens of the State, and male persons of Indian descent native of the United States, who are over the age of 21 years, who have resided in the State one year, in the county six

months, and in the election precinct thirty days, next preceding the election at which any such elector offers to vote: *Provided*, That no person adjudged guilty of a felony after the adoption of this constitution, subject to such exceptions as the legislature may prescribe, unless his citizenship shall have been restored in the manner provided by law; nor any person, while kept in a poorhouse or other asylum at the public expense, except Federal and confederate ex-soldiers; nor any person in a public prison, nor any idiot or lunatic, shall be entitled to vote at any election under the laws of this State.

SEC. 2. For the purpose of voting, no member of the Regular Army or Navy of the United States shall gain a residence in this State by reason of being stationed in this State, nor shall any such person lose a residence in the State while absent from the State in the military or naval service of the United States.

SEC. 3. Until otherwise provided by law, all female citizens of this State, possessing like qualifications of male electors, shall be qualified to vote at school district elections or meetings.

Primary Elections.

SEC. 4. The legislature shall enact laws creating an election board (not more than a majority of whose members shall be selected from the same political party), and shall provide the time and manner of holding and conducting all elections; and, at any time the Federal Constitution may permit the election of United States Senators by direct vote of the people, the legislature shall provide for their election as for the election of governor and other elective officers.

SEC. 5. The legislature shall enact laws providing for a mandatory primary system, which shall provide for the nomination of all candidates in all elections for State, district, county, and municipal officers, for all political parties, including United States Senators: *Provided, however*, This provision shall not exclude the right of the people to place on the ballot by petition any nonpartisan candidate.

SEC. 6. In all elections by the people the vote shall be by ballot and the legislature shall provide the kind of ticket or ballot to be used and make all such other regulations as may be necessary to detect and punish fraud, and preserve the purity of the ballot; and may, when necessary, provide by law for the registration of electors throughout the State or in any incorporated city or town thereof, and, when it is so provided, no person shall vote at any election unless he shall have registered according to law.

SEC. 7. The election shall be free and equal. No power, civil or military, shall ever interfere to prevent the free exercise of the right of suffrage, and electors shall, in all cases, except for treason, felony, and breach of the peace, be privileged from arrest during their attendance on elections and while going to and from the same.

ARTICLE IV.

Distribution of powers.

SECTION 1. The powers of the government of the State of Oklahoma shall be divided into three separate departments—the legislative, executive, and judicial; and except as provided in this consti-

tution, the legislative, executive, and judicial departments of government shall be separate and distinct, and neither shall exercise the powers properly belonging to either of the others.

ARTICLE V.

Legislative department.

INITIATIVE AND REFERENDUM.

SECTION 1. The legislative authority of the State shall be vested in a legislature, consisting of a senate and a house of representatives; but the people reserve to themselves the power to propose laws and amendments to the constitution and to enact or reject the same at the polls independent of the legislature, and also reserve power at their own option to approve or reject at the polls any act of the legislature.

SEC. 2. The first power reserved by the people is the initiative, and 8 per centum of the legal voters shall have the right to propose any legislative measure, and 15 per centum of the legal voters shall have the right to propose amendments to the constitution by petition, and every such petition shall include the full text of the measure so proposed. The second power is the referendum, and it may be ordered (except as to laws necessary for the immediate preservation of the public peace, health, or safety), either by petition signed by 5 per centum of the legal voters or by the legislature as other bills are enacted. The ratio and per centum of legal voters hereinbefore stated shall be based upon the total number of votes cast at the last general election for the State office receiving the highest number of votes at such election.

SEC. 3. Referendum petitions shall be filed with the secretary of state not more than ninety days after the final adjournment of the session of the legislature which passed the bill on which the referendum is demanded. The veto power of the governor shall not extend to measures voted on by the people. All elections on measures referred to the people of the State shall be had at the next election held throughout the State, except when the legislature or the governor shall order a special election for the express purpose of making such reference. Any measure referred to the people by the initiative shall take effect and be in force when it shall have been approved by a majority of the votes cast in such election. Any measure referred to the people by the referendum shall take effect and be in force when it shall have been approved by a majority of the votes cast thereon and not otherwise.

The style of all bills shall be: "Be it enacted by the people of the State of Oklahoma."

Petitions and orders for the initiative and for the referendum shall be filed with the secretary of state and addressed to the governor of the State, who shall submit the same to the people. The legislature shall make suitable provisions for carrying into effect the provisions of this article.

SEC. 4. The referendum may be demanded by the people against one or more items, sections, or parts of any act of the legislature in the same manner in which such power may be exercised against a

complete act. The filing of a referendum petition against one or more items, sections, or parts of an act shall not delay the remainder of such act from becoming operative.

SEC. 5. The powers of the initiative and referendum reserved to the people by this constitution for the State at large are hereby further reserved to the legal voters of every county and district therein, as to all local legislation, or action, in the administration of county and district government in and for their respective counties and districts.

The manner of exercising said powers shall be prescribed by general laws, except that boards of county commissioners may provide for the time of exercising the initiative and referendum powers as to local legislation in their respective counties and districts.

The requisite number of petitioners for the invocation of the initiative and referendum in counties and districts shall bear twice or double the ratio to the whole number of legal voters in such county or district as herein provided therefore in the State at large.

SEC. 6. Any measure rejected by the people, through the powers of the initiative and referendum, can not be again proposed by the initiative within three years thereafter by less than 25 per centum of the legal voters.

SEC. 7. The reservation of the powers of the initiative and referendum in this article shall not deprive the legislature of the right to repeal any law, propose or pass any measure, which may be consistent with the constitution of the State and the Constitution of the United States.

SEC. 8. Laws shall be provided to prevent corruption in making, procuring, and submitting initiative and referendum petitions.

The legislature.

SENATE.

SEC. 9. The senate, except as hereinafter provided, shall consist of not more than 44 members, whose term of office shall be four years: *Provided*, That one senator elected at the first election from each even numbered district shall hold office until the fifteenth day succeeding the regular State election in 1908, and one elected from each odd numbered district at said first election shall hold office until the fifteenth day succeeding the day of the regular State election in 1910: *And provided further*, That in districts electing two senators, the two elected at the first election shall cast lots in such manner as the legislature may prescribe to determine which shall hold the long and which the short term.

SEC. 9. (*a*) At the time each senatorial appointment is made after the year 1910 the State shall be divided into 44 districts, to be called senatorial districts, each of which shall elect one senator; and the senate shall always be composed of 44 senators, except that in event any county shall be entitled to three or more senators at the time of any appointment such additional senator or senators shall be given such county in addition to the 44 senators and the whole number to that extent. Said districts shall be numbered from 1 to 44, inclusive, and each of said districts shall contain as near as may be an equal number of inhabitants, such population to be ascertained by the next

preceding Federal census, or in such manner as the legislature may direct, and shall be in as compact form as practicable and shall remain unaltered until the next decennial period, and shall at all times consist of contiguous territory.

(*b*) No county shall ever be divided in the formation of a senatorial district except to make two or more senatorial districts wholly in such county. No town and no ward in a city when constituting only one voting precinct, shall be divided in the formation of a senatorial district, nor shall any senatorial district contain a greater excess in population over an adjoining district in the same county than the population of a town, or ward in a city, constituting only one voting precinct therein, adjoining such district. Towns and wards in cities constituting only one voting precinct, which may, from their location, be included in either of two senatorial districts, shall be so placed as to make such districts most nearly equal in number of inhabitants.

HOUSE OF REPRESENTATIVES.

SEC. 10. The house of representatives, until otherwise provided by law, shall consist of not more than 109 members, who shall hold office for two years: *Provided*, That the representatives elected at the first election shall hold office until the fifteenth day succeeding the day of the regular State election in 1908: *And provided*, That the day on which State elections shall be held shall be fixed by the legislature.

(*a*) The first legislature shall meet at the seat of government upon proclamation of the governor on the day named in said proclamation, which shall not be more than thirty days nor less than fifteen days after the admission of the State into the Union.

(*b*) The apportionment of this State for members of the legislature shall be made at the first session of the legislature after each decennial Federal census.

(*c*) The whole population of the State as ascertained by the Federal census, or in such manner as the legislature may direct, shall be divided by the number 100 and the quotient shall be the ratio of representation in the house of representatives for the next ten years succeeding such appointment.

(*d*) Every county having a population equal to one-half of said ratio shall be entitled to 1 representative; every county containing said ratio and three-fourths over shall be entitled to 2 representatives, and so on, requiring after the first 2 an entire ratio for each additional representative: *Provided*, That no county shall ever take part in the election of more than 7 representatives.

(*e*) When any county shall have a fraction above the ratio so large that being multiplied by 5 the result will be equal to 1 or more ratios, additional representatives shall be apportioned for such ratio among the several sessions of the decennial period. If there are 2 ratios, representatives shall be allotted to the fourth and third sessions, respectively: if 3, the third, second, and first sessions, respectively; if 4, to the fourth, third, second, and first sessions, respectively.

(*f*) Any county forming with another county or counties a representative district during one decennial period if it has acquired sufficient population, at a fixed decennial period, shall be entitled to

an additional representative, if there shall be left in the district from which it shall have been separated a population sufficient for a representative. No such change shall be made except at the regular decennial period for the apportionment of representatives.

(*g*) If in fixing any decennial ratio, a county previously a separate representative district shall have less than the number required by the ratio for a representative, such county shall be attached to a county adjoining it and become a part of such representative district.

(*h*) No county shall ever be divided in the formation of representative districts except to make two or more representative districts in such county. No town, or ward in a city, where it constitutes only one voting precinct, shall be divided in the formation of representative districts, nor shall any representative district contain a greater excess in population over an adjoining district in the same county than the population of a town or ward in a city, constituting only one voting precinct adjoining such district. Counties, towns, or wards in cities, constituting only one voting precinct, which, from location, may be included in either of two districts, shall be so placed as to make said districts most nearly equal in number of inhabitants.

(*i*) Ascertaining the ratio of representation according to the Federal census, or such other enumeration as the legislature may provide, and attaching any county, previously having a separate representative but found to have less than the number required by the ratio, to an adjoining county; and determing the number of representatives each county or district shall be entitled to, and for what sessions of the legislature within the next decennial period; and apportioning the senators, shall be done by the legislature and be presented to the governor for his approval in the same manner as other bills which may be passed by the legislature.

(j) An apportionment by the legislature shall be subject to review by the supreme court at the suit of any citizen, under such rules and regulations as the legislature may prescribe. And such court shall give all cases involving apportionment precedence over all other cases and proceedings; and if said court be not in session, it shall convene promptly for the disposal of the same.

LEGISLATIVE APPORTIONMENT.

SEC. 11. Until the apportionment is made by the legislature after the next Federal decennial census, the State, except as otherwise provided, shall be divided into 33 senatorial districts, each of whom shall be composed of the counties as named, shall be numbered and elect senators as follows, namely:

First, Beaver, Cimmaron, Harper, and Texas, 1 senator; Second, Beckham, Dewey, Ellis, and Roger Mills, 2 senators; Third, Woods and Woodward, 1 senator; Fourth, Greer, 1 senator; Fifth, Jackson and Tillman, 1 senator; Sixth, Custer, Kiowa, and Wachita, 2 senators; Seventh, Alfalfa and Major, 1 senator; Eighth, Garfield, 1 senator; Ninth, Osage, Grant, and Kay, 2 senators; Tenth, Noble and Pawnee, 1 senator; Eleventh, Creek and Payne, 1 senator; Twelfth, Logan, 1 senator; Thirteenth, Lincoln and Pottawatomie, 2 senators; Fourteenth, Canadian and Oklahoma, 2 senators; Fifteenth, Caddo and Grady, 2 senators; Sixteenth, Blaine and Kingfisher, 1 senator; Seventeenth, Comanche, Jefferson, and Stephens, 2

senators; Eighteenth, Carter, Love, and Murray, 2 senators; Nineteenth, Cleveland, Garvin, and McClain, 2 senators; Twentieth, Atoka, Bryan, and Coal, 2 senators; Twenty-first, Latimer and Le Flore, 1 senator; Twenty-second, Hughes and Okfuskee, 1 senator; Twenty-third, Pontotoc and Seminole, 1 senator; Twenty-fourth, Choctaw, McCurtain, and Pushmataha, 1 senator; Twenty-fifth, Pittsburg, 1 senator; Twenty-sixth, Marshall and Johnston, 1 senator; Twenty-seventh, Haskell, McIntosh, and Muskogee, 2 senators; Twenty-eighth, Adair and Sequoyah, 1 senator; Twenty-ninth, Mayes and Craig, 1 senator; Thirtieth, Ottawa, Delaware, and Cherokee, 1 senator; Thirty-first, Tulsa and Washington, 1 senator; Thirty-second, Okmulgee and Wagoner, 1 senator; Thirty-third, Nowata and Rogers, 1 senator.

SEC. 12. The following counties shall each elect 1 member to the house of representatives: Adair, Alfalfa, Atoka, Beaver, Beckham, Blaine, Canadian, Cherokee, Choctaw, Cimarron, Cleveland, Coal, Comanche, Craig, Creek, Custer, Delaware, Dewey, Ellis, Grant, Harper, Haskell, Hughes, Jackson, Jefferson, Johnston, Kingfisher, Latimer, Le Flore, Love, Major, Marshall, Mayes, Murray, McClain, McCurtain, McIntosh, Noble, Nowata, Okfuskee, Okmulgee, Osage, Ottawa, Pawnee, Payne, Pontotoc, Pushmataha, Rogers, Roger Mills, Seminole, Sequoyah, Stephens, Texas, Tillman, Tulsa, Wagoner, Washington, Washita, Woods, and Woodward.

SEC. 13. The following counties shall elect 2 members of the house of representatives: Bryan, Caddo, Carter, Garvin, Grady, Kay, Kiowa, Muskogee, and Pittsburg.

(*a*) Garfield, 1 to be elected from each of the following districts: District 1, the city of Enid, Enid township, and the townships of North Enid, Banner, and Garland. District 2, all that part of Garfield county not contained in District 1.

(*b*) Greer, 1 to be elected from each of the following districts: District 1, all that part of Greer County lying east of the line between ranges 23 and 24. District 2, all that part of Greer County not contained in District 1.

(*c*) Lincoln, 1 to be elected from each of the following districts: District 1, the townships of Pawnee, Ponca, North Fox, South Fox, North Keokuk, South Keokuk, North Creek, South Creek, North Seminole, South Seminole, North Choctaw, and South Choctaw, with all towns and cities contained therein. District 2, all that part of Lincoln county not contained in district 1.

SEC. 14. The following counties shall elect 3 members each: Pottawatomie and Logan.

Pottawatomie shall elect 3 members at large. Logan, with 3 members prorated as follows: District 1 shall be composed of the townships of Marshall, Bismarck, Orlando, Oak View, Rose Hill, Mulhull, Crescent, Woodland, Lawrie, Cedar, Iron Mound, Spring Creek, Antelope, and North Cimarron, and all towns and villages therein. District 2 shall consist of all that part of the city of Guthrie described as follows: That part of the First Ward lying north of Harrison avenue, the Second Ward, the Third Ward, the Fourth Ward, and all of the Fifth Ward except that part lying south of Cleveland avenue and east of Fourteenth street. District 3 shall consist of all that part of Logan County not included in districts 1 and 2.

SEC. 15. Oklahoma County shall have representatives to be elected as follows: 1 from the county at large. The other 3 to be prorated as follows: District 1, Oklahoma City, and the townships of Oklahoma and Greely, with all towns and cities contained therein, 2 members. District 2, all that part of Oklahoma County not contained in district 1, one member.

SEC. 16. (*a*) The following pairs of counties shall compose additional legislative districts and each district shall elect 1 member to the house of representatives: Johnston and Coal, Bryan and Atoka, Pontotoc and Seminole, Muskogee and Haskell, Pittsburg and Hughes, Comanche and Stephens, Washita and Custer, Pottawatomie and Lincoln, Sequoyah and Le Flore, Alfalfa and Grant, Craig and Rogers, Garfield and Kingfisher, Payne and Pawnee, Creek and Tulsa.

(*b*) The following trio of counties shall constitute one legislative district with one member: Caddo, Canadian, and Cleveland.

QUALIFICATIONS AND RIGHTS OF MEMBERS.

SEC. 17. Members of the senate shall be at least 25 years of age, and members of the house of representatives 21 years of age at the time of their election. They shall be qualified electors in their respective counties or districts and shall reside in their respective counties or districts during their term of office.

SEC. 18. No person shall serve as a member of the legislature who is, at the time of such service, an officer of the United States or State government, or is receiving compensation as such; nor shall any person be eligible to election to the legislature who has been adjudged guilty of a felony.

SEC. 19. A member of the legislature expelled for corruption shall not thereafter be eligible to membership in either house. Punishment for contempt or disorderly conduct, or for any other cause, shall not bar an indictment for the same offense.

SEC. 20. The governor shall issue writs of election to fill such vacancies as may occur in the legislature.

SEC. 21. Members of the legislature shall receive $6 per diem for their services during the session of the legislature, and 10 cents per mile for every mile of necessary travel in going to and returning from the place of meeting of the legislature, on the most usual route, and shall receive no other compensation: *Provided*, That members of the legislature, except during the first session thereof held under this constitution, shall receive only $2 per diem for their services after sixty days of such session have elapsed.

SEC. 22. Senators and representatives shall, except for treason, felony, or breach of the peace, be privileged from arrest during the session of the legislature, and in going to and returning from the same, and for any speech or debate in either house shall not be questioned in any other place.

SEC. 23. No member of the legislature shall, during the term for which he was elected, be appointed or elected to any office or commission in the State, which shall have been created, or the emoluments of which shall have been increased, during his term of office, nor shall any member receive any appointment from the governor, the governor

and senate, or from the legislature, during the term for which he shall have been elected, nor shall any member, during the term for which he shall have been elected, or within two years thereafter, be interested, directly or indirectly, in any contract with the State, or any county or other subdivision thereof, authorized by law passed during the term for which he shall have been elected.

SEC. 24. A member of the legislature who has a personal or private interest in any measure or bill, proposed or pending before the legislature, shall disclose the fact to the house of which he is a member, and shall not vote thereon.

SESSIONS OF LEGISLATURE.

SEC. 25. The first session of the legislature, held by virtue of this constitution, shall not exceed one hundred and sixty days.

SEC. 26. The members of the legislature shall meet at the seat of government on the first Tuesday after the Monday in January at 12 o'clock, noon, in the year next succeeding their election, or upon such other day as may be provided by law.

SEC. 27. The legislature shall hold regular biennial sessions as herein provided, but this shall not prevent the calling of a special session of the legislature by the governor.

ORGANIZATION AND RULES.

SEC. 28. The senate shall, at the beginning of each regular session and at such other times as may be necessary, elect one of its members president pro tempore, who shall preside over its deliberations in the absence or place of the lieutenant-governor; and the senate shall provide for all its standing committees and, by a majority vote, elect the members thereof.

SEC. 29. The house of representatives shall, at the beginning of each regular session and at such other times as may be necessary, elect one of its members speaker.

SEC. 30. Each house shall be the judge of the elections, returns, and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner and under such penalty as each house may provide.

Each house may determine the rules of its proceedings, punish its members for disorderly behavior and, with the concurrence of two-thirds, expel a member.

Each house shall keep a journal of its proceedings, and from time to time publish the same. The yeas and nays of the members of either house or any question, at the desire of one-fifteenth of those present, shall be entered upon its journal.

Neither house, during the session of the legislature, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.

SEC. 31. In all elections made by the legislature, except for officers and employees thereof, the members thereof shall vote yea or nay, and each vote shall be entered upon the journal.

SEC. 32. No special or local law shall be considered by the legislature until notice of the intended introduction of such bill or bills shall first have been published for four consecutive weeks in some weekly newspaper published or of general circulation in the city or county affected by such law, stating in substance the contents thereof, and verified proof of such publication filed with the secretary of state.

SEC. 33. All bills for raising revenue shall originate in the house of representatives. The senate may propose amendments to revenue bills. No revenue bill shall be passed during the five last days of the session.

SEC. 34. Every bill shall be read on three different days in each house, and no bill shall become a law unless, on its final passage, it be read at length, and no law shall be passed unless upon a vote of a majority of all the members elected to each house in favor of such law; and the question, upon final passage, shall be taken upon its last reading, and the yeas and nays shall be entered upon the journal.

SEC. 35. The presiding officer of each house shall, in the presence of the house over which he presides, sign all bills and joint resolutions passed by the legislature, immediately after the same shall have been publicly read at length, and the fact of reading and signing shall be entered upon the journal, but the reading at length may be dispensed with by a two-thirds vote of a quorum present, which vote, by yeas and nays, shall also be entered upon the journal.

POWERS AND DUTIES.

SEC. 36. The authority of the legislature shall extend to all rightful subjects of legislation, and any specific grant of authority in this constitution, upon any subject whatsoever, shall not work a restriction, limitation, or exclusion of such authority upon the same or any other subject or subjects whatsoever.

SEC. 37. The legislature shall have the power to establish a state printing plant and to provide for the election or appointment of a state printer.

SEC. 38. The legislature shall provide for the establishment of a state geological and economic survey.

SEC. 39. The legislature shall create a board of health, board of dentistry, board of pharmacy, and pure food commission, and prescribe the duties of each. All physicians, dentists, and pharmacists now legally registered and practicing in Oklahoma and Indian Territory shall be eligible to registration in the State of Oklahoma without examination or cost.

SEC. 40. The legislature shall provide for organizing, disciplining, arming, maintaining, and equipping the militia of the State.

SEC. 41. The legislature may enact laws authorizing cities to pension meritorious and disabled firemen.

SEC. 42. In any legislative investigation either house of the legislature, or any committee thereof, duly authorized by the house creating the same, shall have power to punish as for contempt, disobedience of process, or contumacious or disorderly conduct, and this provision shall also apply to joint sessions of the legislature, and also to joint committees thereof, when authorized by joint resolution of both houses.

SEC. 43. The legislature shall, in the year 1909 and each ten years thereafter, make provision by law for revising, digesting, and promulgating the statutes of the State.

SEC. 44. The legislature shall define what is an unlawful combination, monopoly, trust, act, or agreement, in restraint of trade, and enact laws to punish persons engaged in any unlawful combination, monopoly, trust, act, or agreement, in restraint of trade, or composing any such monopoly, trust, or combination.

SEC. 45. The legislature shall pass such laws as are necessary for carrying into effect the provisions of this constitution.

LIMITATIONS.

SEC. 46. The legislature shall not, except as otherwise provided in this constitution, pass any local or special law authorizing the creation, extension, or impairing of liens; regulating the affairs of counties, cities, towns, wards, or school districts; changing the names of persons or places; authorizing the laying out, opening, altering, or maintaining of roads, highways, streets, or alleys; relating to ferries or bridges, or incorporating ferry or bridge companies, except for the erection of bridges crossing streams which form boundaries between this and any other State; vacating roads, town plats, streets, or alleys; relating to cemeteries, graveyards, or public grounds not owned by the State; authorizing the adoption or legitimation of children; locating or changing county seats; incorporating cities, towns, or villages, or changing their charters; for the opening and conducting of elections, or fixing or changing the places of voting; granting divorces; creating offices, or prescribing the powers and duties of officers, in counties, cities, towns, election or school districts; changing the law of descent or succession; regulating the practice or jurisdiction of, or changing the rules of evidence in judicial proceedings or inquiry before the courts, justices of the peace, sheriffs, commissioners, arbitrators, or other tribunals, or providing or changing the methods for the collection of debts, or the enforcement of judgments or prescribing the effect of judicial sales of real estate; regulating the fees, or extending the powers and duties of aldermen, justices of the peace, or constables; regulating the management of public schools, the building or repairing of schoolhouses, and the raising of money for such purposes; fixing the rate of interest; affecting the estate of minors, or persons under disability; remitting fines, penalties and forfeitures, and refunding moneys legally paid into the treasury; exempting property from taxation; declaring any named person of age; extending the time for the assessment or collection of taxes, or otherwise relieving any assessor or collector of taxes from due performance of his official duties, or his securities from liability; giving effect to informal or invalid wills or deeds; summoning or impaneling grand or petit juries; for limitation of civil or criminal actions; for incorporating railroads or other works of internal improvements; providing for change of venue in civil and criminal cases.

SEC. 47. The legislature shall not retire any officer on pay or part pay, or make any grant to such retiring officer.

SEC. 48. The legislature shall have no power to appropriate any of the public money for the establishment and maintenance of a bureau of immigration in this State.

SEC. 49. The legislature shall not increase the number or emolument of its employees, or the employees of either house, except by general law, which shall not take effect during the term at which such increase was made.

SEC. 50. The legislature shall pass no law exempting any property within this State from taxation, except as otherwise provided in this constitution.

SEC. 51. The legislature shall pass no law granting to any association, corporation, or individual any exclusive rights, privileges, or immunities within this State.

SEC. 52. The legslature shall have no power to revive any right or remedy which may have become barred by lapse of time, or by any statute of this State. After suit has been commenced on any cause of action, the legislature shall have no power to take away such cause of action, or destroy any existing defense to such suit.

SEC. 53. The legislature shall have no power to release or extinguish, or to authorize the releasing or extinguishing, in whole or in part, the indebtedness, liabilities, or obligations of any corporation, or individual, to this State, or any county or other municipal corporation thereof.

MISCELLANEOUS PROVISIONS.

SEC. 54. The repeal of a statute shall not revive a statute previously repealed by such statute, nor shall such repeal affect any accrued right, or penalty incurred, or proceedings begun by virtue of such repealed statute.

SEC. 55. No money shall ever be paid out of the treasury of this State, nor any of its funds, nor any of the funds under its management, except in pursuance of an appropriation by law, nor unless such payments be made within two and one-half years after the passage of such appropriation act, and every such law making a new appropriation, or continuing or reviving an appropriation, shall distinctly specify the sum appropriated and the object to which it is to be applied, and it shall not be sufficient for such law to refer to any other law to fix such sum.

SEC. 56. The general appropriation bill shall embrace nothing but appropriations for the expenses of the executive, legislative, and judicial departments of the State, and for interest on the public debt. The salary of no officer or employee of the State, or any subdivision thereof, shall be increased in such bill, nor shall any appropriation be made therein for any such officer or employee, unless his employment and the amount of his salary shall have been already provided for by law. All other appropriations shall be made by separate bills, each embracing but one subject.

SEC. 57. Every act of the legislature shall embrace but one subject, which shall be clearly expressed in its title, except general appropriation bills, general revenue bills, and bills adopting a code, digest, or revision of statutes; and no law shall be revived, amended, or the provisions thereof extended or conferred, by reference to its title only; but so much thereof as is revived, amended, extended, or conferred

shall be reenacted and published at length: *Provided*, That if any subject be embraced in any act contrary to the provisions of this section, such act shall be void only as to so much of the law as may not be expressed in the title thereof.

SEC. 58. No act shall take effect until ninety days after the adjournment of the session at which it was passed, except enactments for carrying into effect provisions relating to the initiative and referendum, or a general appropriation bill, unless, in case of emergency, to be expressed in the act, the legislature, by a vote of two-thirds of all members elected to each house, so directs. An emergency measure shall include only such measures as are immediately necessary for the preservation of the public peace, health, or safety, and shall not include the granting of franchises or license to a corporation or individual, to extend longer than one year, nor provision for the purchase or sale of real estate, nor the renting or encumbrance of real property for a longer term than one year. Emergency measures may be vetoed by the governor, but such measures so vetoed may be passed by a three-fourths vote of each house, to be duly entered on the journal.

SEC. 59. Laws of a general nature shall have a uniform operation throughout the State, and where a general law can be made applicable, no special law shall be enacted.

SEC. 60. The legislature shall provide by law for the establishment and maintenance of an efficient system of checks and balances between the officers of the executive department, and all commissioners and superintendents, and boards of control of State institutions, and all other officers intrusted with the collection, receipt, custody, or disbursement of the revenue or moneys of the State whatsoever.

ARTICLE VI.

Executive Department.

SECTION 1. The executive authority of the State shall be vested in a governor, lieutenant-governor, secretary of state, state auditor, attorney-general, state treasurer, superintendent of public instruction, state examiner and inspector, chief mine inspector, commissioner of labor, commissioner of charities and corrections, commissioner of insurance, and other officers provided by law and this constitution, each of whom shall keep his office and public records, books, and papers at the seat of government, and shall perform such duties as may be designated in this constitution or prescribed by law.

SEC. 2. The supreme executive power shall be vested in a chief magistrate, who shall be styled "The governor of the State of Oklahoma."

SEC. 3. No person shall be eligible to the office of governor, lieutenant-governor, secretary of state, state auditor, attorney-general, state treasurer, superintendent of public instruction, or state examiner and inspector, except a male citizen of the United States, of the age of not less than 30 years, and who shall have been three years next preceding his election a qualified elector of this State: *Provided*, That residence in this State shall include the territory now embraced in this State.

SEC. 4. The term of office of the governor, lieutenant-governor, secretary of state (state auditor, attorney-general, state treasurer, state

examiner and inspector, and superintendent of public instruction shall be four years from the second Monday of January next after their election. The governor, secretary of state, state auditor, and state treasurer shall not be eligible immediately to succeed themselves. The term of the state officers chosen at the first election under this constitution shall begin on the day on which the State is admitted into the Union, and expire on the second Monday of January, in the year 1911.

SEC. 5. The returns of every election for all elective State officers shall be sealed up and transmitted by the returning officers to the secretary of state, directed to the speaker of the house of representatives, who shall, immediately after the organization of the house, and before proceeding to other business, open and publish the same in the presence of a majority of each branch of the legislature, who shall for that purpose assemble in the hall of the house of representatives. The persons respectively having the highest number of votes for either of the said offices shall be declared duly elected; but in case two or more shall have an equal and the highest number of votes for either of said offices, the legislature shall, forthwith, by joint ballot, choose one of the said persons so having an equal and the highest number of votes for said office.

GOVERNOR.

SEC. 6. The governor shall be commander in chief of the militia of the State, except when in service of the United States, and may call out the same to execute the laws, protect the public health, suppress insurrecion, and repel invasion.

SEC. 7. The governor shall have power to convoke the legislature, or the senate only, on extraordinary occasions. At extraordinary sessions, no subject shall be acted upon, except such as the governor may recommend for consideration.

SEC. 8. The governor shall cause the laws of the State to be faithfully executed, and shall conduct in person or in such manner as may be prescribed by law all intercourse and business of the State with other States and with the United States, and he shall be a conservator of the peace throughout the State.

SEC. 9. At every session of the legislature, and immediately upon its organization, the governor shall communicate by message, delivered to a joint session of the two houses, upon the condition of the State; and shall recommend such matters to the legislature as he shall judge expedient. He shall also transmit a copy, to each house, of the full report of each State officer and State commission. He shall communicate, from time to time, such matters as he may elect or the legislature may require.

SEC. 10. The governor shall have power to grant, after conviction, reprieves, commutations, paroles, and pardons for all offenses, except cases of impeachment, upon such conditions and with such restrictions and limitations as he may deem proper, subject to such regulations as may be prescribed by law. He shall communicate to the legislature, at each regular session, each case of reprieve, commutation, parole, or pardon, granted, stating the name of the convict, the crime of which he was convicted, the date and place of conviction and the date of commutation, pardon, parole, or reprieve.

SEC. 11. Every bill which shall have passed the senate and house of representatives, and every resolution requiring the assent of both branches of the legislature, shall, before it becomes a law, be presented to the governor; if he approve, he shall sign it; if not, he shall return it with his objections to the house in which it shall have originated, who shall enter the objections at large in the journal and proceed to reconsider it. If, after such reconsideration, two-thirds of the members elected to that house shall agree to pass the bill or joint resolution, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered; and, if approved by two-thirds of the members elected to that house, it shall become a law, notwithstanding the objections of the governor. In all such cases, the vote in both houses shall be determined by yeas and nays, and the names of the members voting shall be entered on the journal of each house respectively. If any bill or resolution shall not be returned by the governor within five days (Sundays excepted) after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the legislature shall, by their adjournment, prevent its return, in which case it shall not become a law without the approval of the governor. No bill shall become a law after the final adjournment of the legislature, unless approved by the governor within fifteen days after such adjournment.

SEC. 12. Every bill passed by the legislature making appropriations of money embracing distinct items, shall, before it becomes a law, be presented to the governor; if he disapproves the bill, or any item, or appropriation therein contained, he shall communicate such disapproval, with his reasons therefor, to the house in which the bill shall have originated, but all items not disapproved shall have the force and effect of law according to the original provisions of the bill. Any item or items so disapproved shall be void, unless repassed by a two-thirds vote, according to the rules and limitations prescribed in the preceding section in reference to other bills: *Provided*, That this section shall not relieve emergency bills of the requirement of the three-fourths vote.

SEC. 13. The governor shall commission all officers not otherwise commissioned by law. All commissions shall run in the name and by the authority of the "State of Oklahoma," be signed by the Governor, sealed with the great seal of the State of Oklahoma, and attested by the secretary of state. When any office shall become vacant, he shall, unless otherwise provided by law, appoint a person to fill such vacancy, who shall continue in office until a successor shall have been duly elected or appointed, and qualified according to law.

SEC. 14. In case of a disagreement between the two houses of the legislature, at a regular or special session, with respect to the time of adjournment, the governor may, if the facts be certified to him, by the presiding officer of the house first moving the adjournment, adjourn them to such time as he shall deem proper, not beyond the day of the next stated meeting of the legislature. He may convoke the legislature at or adjourn it to another place, when, in his opinion, the public safety or welfare, or the safety or health of the members require it: *Provided, however*, That such change or adjournment shall be concurred in by a two-thirds vote of all the members elected to each branch of the legislature.

LIEUTENANT-GOVERNOR.

SEC. 15. The lieutenant-governor shall possess the same qualifications of eligibility for office as the governor. He shall be president of the senate, but shall have only a casting vote therein, and also in joint vote of both houses. If, during a vacancy of the office of governor, the lieutenant-governor shall be impeached, displaced, resign, die, or be absent from the State, or become incapable of performing the duties of the office, the president pro tempore of the senate shall act as governor until the vacancy be filled or the disability shall cease; and if the president pro tempore of the senate, for any of the above enumerated causes, shall become incapable of performing the duties pertaining to the office of governor, the speaker of the house of representatives shall act as governor until the vacancy be filled or the disability shall cease. Further provisions for succession to the office of governor shall be prescribed by law.

SEC. 16. In the case of impeachment of the governor, or of his death, failure to qualify, resignation, removal from the State, or inability to discharge the powers and duties of the office, the said office, with its compensation, shall devolve upon the lieutenant-governor for the residue of the term or until the disability shall be removed.

SECRETARY OF STATE.

SEC. 17. The secretary of state shall keep a register of the official acts of the governor, and when necessary, shall attest them, and shall lay copies of the same, together with copies of all papers relative thereto, before either house of the legislature, when required to do so. He shall also perform such other duties as shall be prescribed by law.

SEC. 18. The secretary of state shall be the custodian of the seal of the State, and authenticate therewith all official acts of the governor, except his approval of laws. The said seal shall be called "The great seal of the State of Oklahoma."

STATE EXAMINER AND INSPECTOR.

SEC. 19. The state examiner and inspector must have had at least three years' experience as an expert accountant; his duties shall be, without notice to such treasurer, to examine the State and all county treasurers' books, accounts, and cash on hand or in bank at least twice each year, and publish his report as to every such treasurer once each year. For the purpose of such examination he shall take complete possession of such treasurer's office. He shall also prescribe a uniform system of bookkeeping for the use of all treasurers. Other duties and powers may be added by law.

COMMISSIONER OF LABOR.

SEC. 20. A department of labor is hereby created to be under the control of a commissioner of labor who shall be elected by the people, whose term of office shall be four years, and whose duties shall be prescribed by law.

SEC. 21. The legislature shall create a board of arbitration and conciliation in the department of labor and the commissioner of labor shall be ex officio chairman.

THE INSURANCE COMMISSIONER.

SEC. 22. There is hereby established an insurance department, which shall be charged with the execution of all laws now in force, or which shall hereafter be passed, in relation to insurance and insurance companies doing business in the State.

SEC. 23. There shall be elected by the qualified electors of the State, at the first general election, a chief officer of said department, who shall be styled "the insurance commissioner," whose term of office shall be four years: *Provided*, That the first term of the insurance commissioner, so elected, shall expire at the time of the expiration of the term of office of the first governor elected. Said insurance commissioner shall be at least 25 years of age and well versed in insurance matters.

SEC. 24. The insurance commissioner shall give bond, perform such duties, and possess such further qualifications as may be prescribed by law.

CHIEF MINE INSPECTOR.

SEC. 25. The office of chief inspector of mines, oil, and gas is hereby created, and the incumbent of said office shall be known as the chief mine inspector. The term of said office shall be four years, and no person shall be elected to said office unless he shall have had eight years' actual experience as a practical miner, and such other qualifications as may be prescribed by the legislature. The chief mine inspector shall perform the duties, take the oath, and execute the bond prescribed by the legislature.

SEC. 26. The legislature shall create mining districts and provide for the appointment or election of assistant inspectors therein, who shall be under the general control of the chief mine inspector, and the legislature shall define their qualifications and duties and fix their compensation.

COMMISSIONER OF CHARITIES AND CORRECTIONS.

SEC. 27. A commissioner of charities and corrections shall be elected in the same manner, at the same time, and for the same term as shall the governor. Said officer may be of either sex, and shall be 25 years of age or over; in all other respects said officer shall have the qualifications which shall be required of the governor.

SEC. 28. The commissioner of charities and corrections shall have the power, and it is hereby made his or her duty, to investigate the entire system of public charities and corrections, to examine into the condition and management of all prisons, jails, almshouses, reformatories, reform and industrial schools, hospitals, infirmaries, dispensaries, orphanages, and all public and private retreats and asylums, which derive their support wholly or in part from the State, or from any county or municipality within the State; and the officers of the various institutions named herein shall

promptly, upon demand, furnish the said commissioner with such information, relating to their respective institutions, as shall be demanded by said commissioner, in writing. The said commissioner shall have the power to summon any person to appear and produce such books and papers as shall be designated in the summons, and to give testimony under oath concerning the matter and institution under investigation. The said commissioner shall have the power to administer oaths to such persons as may be summoned, and to enforce all such powers as are given to notaries public when they are taking depositions. A full report of said investigation, including the testimony, shall be promptly made to the governor, and shall be transmitted by him to the next legislature with any suggestions which he may desire to make.

SEC. 29. On the 1st day of October of each year, and at any time on request of the governor, the said commissioner shall make a full and complete report of the operations and administration of said office, with such suggestions as said commissioner may deem suitable and pertinent.

SEC. 30. The legislature shall have the power to alter, amend, or add to the duties of, or grant additional authority to, such commissioner.

BOARD OF AGRICULTURE.

SEC. 31. A board of agriculture is hereby created to be composed of 11 members, all of whom shall be farmers and shall be selected in manner prescribed by law.

Said board shall be maintained as a part of the State government, and shall have jurisdiction over all matters affecting animal industry and animal quarantine regulations, and shall be the board of regents of all State agricultural and mechanical colleges, and shall discharge such other duties and receive such compensation as may be provided by law.

COMMISSIONERS OF THE LAND OFFICE.

SEC. 32. The governor, secretary of state, state auditor, superintendent of public instruction, and the president of the board of agriculture, shall constitute the commissioners of the land office, who shall have charge of the sale, rental, disposal, and managing of the school lands and other public lands of the State, and of the funds and proceeds derived therefrom, under rules and regulations prescribed by the legislature.

SEC. 33. An account shall be kept by the officers and commissioners of the State of all moneys and choses in action disbursed or otherwise disposed of severally by them, from all sources, and for every service performed; and a report thereof shall be made semi-annually and as often as may be required by law, to the governor under oath. The governor may, at any time, require information in writing, under oath, from all officers and commissioners of the State, and all officers of State institutions, penal, eleemosynary, educational, and industrial on any subject relating to their respective offices and institutions; which information, when so required, shall be furnished by such officers and managers, and any officer or manager who, at any time, shall make a false report, shall be punished as by law provided.

SEC. 34. Each of the officers in this article named shall, at stated times, during his continuance in office, receive for his services a compensation, which shall not be increased or diminished during the term for which he shall have been elected, nor shall he receive to his use, any fees, costs, or perquisites of office or other compensation.

SEAL OF THE STATE.

SEC. 35. In the center shall be a five-pointed star, with one ray directed upward. The center of the star shall contain the central device of the seal of the Territory of Oklahoma, including the words, "Labor Omnia Vincit." The upper left-hand ray shall contain the symbol of the ancient seal of the Cherokee Nation, namely: A seven-pointed star partially surrounded by a wreath of oak leaves. The ray directed upward shall contain the symbol of the ancient seal of the Chickasaw Nation, namely: An Indian warrior standing upright with bow and shield. The lower left-hand ray shall contain the symbol of the ancient seal of the Creek Nation, namely: A sheaf of wheat and a plow. The upper right-hand ray shall contain the symbol of the ancient seal of the Choctaw Nation, namely: A tomahawk, bow, and three crossed arrows. The lower right-hand ray shall contain the symbol of the ancient seal of the Seminole Nation, namely: A village with houses and a factory beside a lake upon which an Indian is paddling a canoe. Surrounding the central star and grouped between its rays shall be 45 small stars, divided into 5 clusters of 9 stars each, representing the 45 States of the Union, to which the forty-sixth is now added. In a circular band surrounding the whole device shall be inscribed, "GREAT SEAL OF THE STATE OF OKLAHOMA 1907."

ARTICLE VII.

Judicial department.

SECTION 1. The judicial power of this State shall be vested in the senate, sitting as a court of impeachment, a supreme court, district courts, county courts, courts of justices of the peace, municipal courts, and such other courts, commissions, or boards, inferior to the supreme court, as may be established by law.

SEC. 2. The appellate jurisdiction of the supreme court shall be coextensive with the State, and shall extend to all civil cases at law and in equity, and to all criminal cases until a criminal court of appeals with exclusive appellate jurisdiction in criminal cases shall be established by law. The original jurisdiction of the supreme court shall extend to a general superintending control over all inferior courts and all commissions and boards created by law. The supreme court shall have power to issue writs of habeas corpus, mandamus, quo warranto, certiorari, prohibition, and such other remedial writs as may be provided by law, and to hear and determine the same; and the supreme court may exercise such other and further jurisdiction as may be conferred upon it by law. Each of the justices shall have power to issue writs of habeas corpus to any part of the State upon petition by or on behalf of any person held in actual

custody, and make such writs returnable before himself, or before the supreme court, or before any district court, or judge thereof, in the State.

SEC. 3. The supreme court shall consist of 5 justices until the number shall be changed by law. The State shall be divided into 5 supreme court judicial districts until the legislature shall change the number of members of the court, at which time the legislature shall redistrict the State to conform to the number of justices of the supreme court. From each of said districts candidates for justice of the supreme court shall be nominated by political parties, or by petitioners of the respective districts, in the manner provided by law, and such candidates shall be voted for by the qualified voters of the State at large, and no elector at such election shall vote for more than one candidate from each district. The candidate from each district receiving the highest number of votes cast in the State at said election shall be declared the justice elect in said district. A majority of the members of the supreme court shall constitute a quorum, and the concurrence of the majority of said court shall be necessary to decide any question. No person shall be eligible to the office of justice of the supreme court unless he shall be at the time of his election a citizen of the United States and shall have been a resident of the territory embraced within the State for a period of two years, and of the territory comprising the district from which he is elected for a period of one year; and unless he shall have attained the age of 30 years and shall have been a lawyer licensed by some court of record, or shall have been a judge of some court of record, or such judge and lawyer together at least five years.

The term of office of the justices of the supreme court shall be six years, except as herein provided. Each member of such court shall be a conservator of the peace throughout the State; and in case of a vacancy in the membership of said court, the governor shall, by appointment from the district, fill such vacancy until the next general election for State officers, and at such general election the vacancy for the unexpired term shall be filled by election by the qualified voters of the State.

SEC. 4. The term of office of the justices of the supreme court shall commence on the second Monday of January following their election: *Provided, however*, That the term of office of the justices elected at the first election under this constitution shall commence upon the admission of the State into the Union, and shall continue as hereinafter provided. Those appointed or elected to fill vacancies shall enter upon the discharge of their duties as soon as they qualify.

SEC. 5. The sessions of the supreme court shall be held at the seat of government, and the sessions and duration thereof shall be fixed by rule of said court, until fixed by the legislature; but the first term of the supreme court shall be held within ninety days after the admission of the State. The supreme court shall render a written opinion in each case within six months after said case shall have been submitted for decision.

SEC. 6. At the first session of the supreme court the justices thereof shall elect one of their number chief justice, who shall serve as chief justice until the expiration of his term of office; thereafter the chief justice shall be elected in the manner provided by law. Of the jus-

tices elected at the first election, the term of two of them shall expire at the close of the day next preceding the second Monday in January, 1909; and the term of two of the others shall expire at the close of the day next preceding the second Monday in January, 1911; and the term of the other justice shall expire at the close of the day next preceding the second Monday in January, 1913. The supreme court shall, by order duly entered in its minutes, provide the means of determining by lot the expiration of the terms of each of the justices as hereinbefore provided, and shall determine in accordance therewith, and enter in the minutes of the court its order showing the expiration of the term of each of such justices. After the first election, justices of the supreme court shall be elected at the general biennial election next preceding the beginning of their respective terms.

SEC. 7. There shall be elected by the qualified electors of the State at each election for governor, a clerk of the supreme court, who shall be at least 25 years of age and a qualified elector of the State, and whose term shall be the same as that of the governor, and he shall give bond for faithful performance of his duty as may be prescribed by law.

SEC. 8. The appellate and the original jurisdiction of the supreme court shall be invoked in the manner now prescribed by the laws of the Territory of Oklahoma until the legislature shall otherwise provide.

SEC. 9. Until otherwise provided by law, the State shall be divided into 21 judicial districts, and the qualified electors in each of the said districts shall elect a judge of the district court as provided herein, except in the thirteenth judicial district two judges shall be elected. Such judge shall be a citizen of the United States, and shall have been a resident of the territory embraced within the State for two years, and of the territory comprising his district at least one year, prior to his election; and he shall have been a lawyer licensed by some court of record, or shall have been a judge of some court of record, or both such lawyer and judge, for four years next preceding his election, and shall reside in his district during his term of office. The term of office of the district judge shall be four years, and at the time of his election he shall have reached the age of 25 years. Regular terms of the district court shall be held in each organized county of this State at least twice in each year. The time of convening the district court in each county in this State, until the legislature shall otherwise provide, and the duration of the term, shall be fixed by the supreme court of the State. The term of the district judges elected at the first election shall expire on the last day next preceding the second Monday in January, 1911, and the judges of the district court thereafter shall be elected at the general election next preceding the commencement of their terms of office.

In case of the illness of the judge elected in any district, or if for any other cause he shall be unable to preside in the district in which he was elected, the chief justice may designate any district judge in the State to hold any term of court in said district in lieu of the judge elected to hold the courts of said district. Whenever the public business shall require it, the chief justice may appoint any district judge of the State to hold court in any district, and two or more district judges may sit in any district separately at the same time. In the event any judge shall be disqualified for any reason

from trying any case in his district, the parties to such case may agree upon a judge pro tempore to try the same, and if such parties can not agree, at the request of either party a judge pro tempore may be elected by the members of the bar of the district, present at such term. If no election for judge pro tempore shall be had, the chief justice of the State shall designate some other district judge to try such case.

SEC. 10. The district court shall have original jurisdiction in all cases, civil and criminal, except where exclusive jurisdiction is by this constitution, or by law, conferred on some other court, and such appellate jurisdiction as may be provided in this constitution, or by law. The district courts, or any judge thereof, shall have power to issue writs of habeas corpus, mandamus, injunction, quo warranto, certiorari, prohibition, and other writs, remedial or otherwise, necessary or proper to carry into effect their orders, judgments, or decrees. The district courts shall also have the power of naturalization in accordance with the laws of the United States.

SEC. 11. There is hereby established in each county in this State a county court, which shall be a court of record; and, at the election to ratify this constitution there shall be elected in each county a county judge, who shall hold his office until the close of the day next preceding the second Monday in January, 1911; and thereafter the term of office of the county judge shall be two years, and he shall be elected at each biennial general election. The county judge shall be a qualified voter and a resident of the county at the time of his election, and a lawyer licensed to practice in any court of record of the State. The county judge shall be judge of the county court.

SEC. 12. The county court, coextensive with the county, shall have original jurisdiction in all probate matters, and until otherwise provided by law, shall have concurrent jurisdiction with the district court in civil cases in any amount not exceeding $1,000, exclusive of interest: *Provided*, That the county court shall not have jurisdiction in any action for malicious prosecution, or in any action for divorce or alimony, or in any action against officers for misconduct in office, or in actions for slander or libel, or in actions for the specific performance of contracts for the sale of real estate, or in any matter wherein the title or boundaries of land may be in dispute or called in question; nor to order or decree the partition or sale of real estate, not arising under its probate jurisdiction.

It shall have such appellate jurisdiction of the judgments of justices of the peace in civil and criminal cases as may be provided by law, or in this constitution. The county court shall have jurisdiction concurrent with justices of the peace in misdemeanor cases, and exclusive jurisdiction in all misdemeanor cases of which justices of the peace have not jurisdiction. In the absence of the judge of the district court from the county, or in case of his disqualification for any reason, the county court, or judge thereof, shall have power to issue writs of injunction in matters about to be brought or pending in the district court; and to issue writs of injunction, mandamus, and all writs necessary to enforce the jurisdiction of the county courts; and issue writs of habeas corpus in cases where the offense charged is within the jurisdiction of the county court or any other court or tribunal inferior to said court.

When the county judge is disqualified in any case pending in the county court, a judge pro tempore may be selected in the manner provided for the selection of judges pro tempore in the district court.

SEC. 13. The county court shall have the general jurisdiction of a probate court. It shall probate wills, appoint guardians of minors, idiots, lunatics, persons non compos mentis, and common drunkards; grant letters testamentary and of administration, settle accounts of executors, administrators, and guardians; transact all business appertaining to the estates of deceased persons, minors, idiots, lunatics, persons non compos mentis, and common drunkards, including the sale, settlement, partition, and distribution of the estates thereof. The county court shall be held at the county seat, but the legislature may provide for holding sessions of the county court at not more than two additional places in the county: *Provided*, That alternate sessions of county court in Le Flore County shall be held at Talihina.

SEC. 14. Until otherwise provided by law, the county court shall have jurisdiction of all cases on appeals from judgments of the justices of the peace in civil and criminal cases; and in all cases, civil and criminal, appealed from justices of the peace to such county court, there shall be a trial de novo on questions of both law and fact.

SEC. 15. Appeals and proceedings in error shall be taken from the judgments of county courts direct to the supreme court, in all cases appealed from justices of the peace, and in all criminal cases of which the county court is vested with jurisdiction, and in all civil cases originally brought in the county court, in the same manner and by like proceedings as appeals are taken to the supreme court from the judgments of the district court.

SEC. 16. Until otherwise provided by law, in all cases arising under the probate jurisdiction of the county court, appeals may be taken from the judgments of the county court to the district court of the county in the same manner as is now provided by the laws of the Territory of Oklahoma for appeals from probate court to the district court, and in all cases appealed from the county court to the district court, the cause shall be tried de novo in the district court upon questions of both law and fact.

SEC. 17. County courts shall also have and exercise the jurisdiction of examining and committing magistrates in all criminal cases.

SEC. 18. The office of justice of the peace is hereby created, and, until otherwise provided by law, courts of justices of the peace shall have, coextensive with the county, jurisdiction as examining and committing magistrates in all felony cases, and shall have jurisdiction, concurrent with the county court, in civil cases where the amount involved does not exceed $200, exclusive of interest and costs, and concurrent jurisdiction with the county court in all misdemeanor cases in which the punishment does not exceed a fine of $200 or imprisonment in the county jail for not exceeding thirty days, or both such fine and imprisonment; but justices of the peace shall in no event have jurisdiction in actions for libel and slander. Until otherwise provided by law, appeals shall be allowed from judgments of the court of justices of the peace in all civil and criminal cases to the county court to the manner now provided by the laws of the Territory of Oklahoma governing appeals from the courts of justices of the peace to the district court. In cities of more than 2,500 inhabitants, two justices of the peace shall be elected.

SEC. 19. All judges of courts of this State, and justices of the peace, shall, by virtue of their office, be conservators of the peace throughout the State.

The style of all writs and processes shall be "The State of Oklahoma." All prosecutions shall be carried on in the name and by the authority of the State of Oklahoma. All indictments, informations, and complaints shall conclude, "Against the peace and dignity of the State."

SEC. 20. In all issues of fact jointed in any court, all parties may waive the right to have the same determined by jury; in which case the finding of the judge, upon the facts, shall have the force and effect of a verdict by jury.

SEC. 21. In all jury trials the jury shall return a general verdict, and no law in force, nor any law hereafter enacted, shall require the court to direct the jury to make findings on particular questions of fact; but the court may, in its discretion, direct such special findings.

JUDICIAL APPORTIONMENT.

SEC. 22. The State is hereby divided into 5 supreme court judicial districts, numbered respectively, 1 to 5, inclusive, and is subdivided into 21 district court judicial districts, numbered respectively, 1 to 21, inclusive; and all such judicial districts shall be and remain until changed as provided in this constitution.

SEC. 23. Of the supreme court judicial districts, number 1 shall embrace the first, second, third, and fourth district court judicial districts; number 2 shall embrace the fifth, sixth, seventh, and eighth district court judicial districts; number 3 shall embrace the ninth, tenth, eleventh, twelfth, and twenty-first district court judicial districts; number 4 shall embrace the thirteenth, fourteenth, fifteenth, and sixteenth district court judicial districts, and number 5 shall embrace the seventeenth, eighteenth, nineteenth, and twentieth district court judicial districts.

SEC. 24. Of the district court judicial districts, number 1 shall comprise the counties of Adair, Cherokee, Delaware, and Sequoyah; number 2, the counties of Craig, Mayes, Nowata, Ottawa, Rogers, and Washington; number 3, the counties of Muskogee and Wagoner; number 4, the counties of McIntosh and Pittsburg; number 5, the counties of Haskell, Latimer, Le Flore, and Pushmataha; number 6, the counties of Bryan, Choctaw, Marshall, and McCurtain; number 7, the counties of Atoka, Coal, Johnston, Pontotoc, and Seminole; number 8, the counties of Carter and Love; number 9, the counties of Hughes, Creek, Okfuskee, and Okmulgee; number 10, the counties of Lincoln and Pottawatomie; number 11, the counties of Kingfisher and Logan; number 12, the counties of Grant, Kay, and Noble; number 13, the counties of Canadian and Oklahoma, with two judges; number 14, the counties of Cleveland, Garvin, McClain, and Murray; number 15, the counties of Caddo, Grady, Jefferson, and Stephens; number 16, the counties of Comanche, Jackson, and Tilman; number 17, the counties of Blaine, Custer, Kiowa, and Washita; number 18, the counties of Beckham, Dewey, Ellis, Greer, and Roger Mills; number 19, the counties of Beaver, Cimarron, Harper, Texas, Woods, and Woodward; number 20, the counties of Alfalfa,

Garfield, and Major; number 21, the counties of Osage, Payne, Pawnee, and Tulsa.

SEC. 25. The terms of the district court shall be held at the county seat of the respective counties.

ARTICLE VIII.

Impeachment and removal from office.

SECTION 1. The governor and other elective State officers, including the justices of the supreme court, shall be liable and subject to impeachment for wilful neglect of duty, corruption in office, habitual drunkenness, incompetency, or any offense involving moral turpitude committed while in office.

SEC. 2. All elective officers, not liable to impeachment, shall be subject to removal from office in such manner and for such causes as may be provided by law.

SEC. 3. When sitting as a court of impeachment, the senate shall be presided over by the chief justice, or if he is absent or disqualified, then one of the associate justices of the supreme court, to be selected by it, except in cases where all the members of said court are absent or disqualified, or in cases of impeachment of any justice of the supreme court, then the senate shall elect one of its own members as a presiding officer for such purpose. The house of representatives shall present all impeachments.

SEC. 4. When the senate is sitting as a court of impeachment, the senators shall be on oath, or affirmation, impartially to try the party impeached, and no person shall be convicted without the concurrence of two-thirds of the senators present.

SEC. 5. Judgment of impeachment shall not extend beyond removal from office, but this shall not prevent punishment of any such officer on charges growing out of the same matter by the courts of the State.

SEC. 6. The legislature shall pass such laws as are necessary for carrying into effect the provisions of this article.

ARTICLE IX.

Corporations.

DEFINITION.

SECTION 1. As used in this article, the term "corporation" or "company" shall include all associations and joint stock companies having any power or privileges, not possessed by individuals, and exclude all municipal corporations and public institutions owned or controlled by the State; the term "charter" shall mean the charter of incorporation, by or under which any corporation is formed. The term "license" shall mean the authority under which all foreign corporations are permitted to transact business in this State.

RAILROAD AND PUBLIC SERVICE CORPORATIONS.

SEC. 2. Every railroad, oil pipe, car, express, telephone or telegraph corporation or association organized or authorized to do a

transportation or transmission business under the laws of this State for such purpose, shall, each respectively, have the right to construct and operate its line between any points in this State, and as such to connect at the State line with like lines; and every such company shall have the right with its road or line, to intersect, connect with, or cross any railroad or such line.

SEC. 3. Every railroad, car, or express company, shall each respectively receive and transport without delay or discrimination each other's cars, loaded or empty, tonnage, and passengers, under such rules and regulations as may be prescribed by law or any commission created by this constitution or by act of the legislature, for that purpose.

SEC. 4. All oil pipe companies shall be subject to the reasonable control and regulation of the corporation commission, and shall receive and transport each other's tonnage or oils, or commodities, under such rules and regulations as shall be prescribed by law, or such commission.

SEC. 5. All telephone and telegraph lines, operated for hire, shall each respectively, receive and transmit each other's messages without delay or discrimination, and make physical connections with each other's lines, under such rules and regulations as shall be prescribed by law, or by any commission created by this constitution, or any act of the legislature for that purpose.

SEC. 6. Railroads heretofore constructed, or which may hereafter be constructed in this State, are hereby declared public highways. Every railroad or other public service corporation organized or doing business in this State, under the laws or authority thereof, shall have and maintain a public office or place in this State, for the transaction of its business, where transfers of stock shall be made, and where shall be kept, for inspection by the stockholders of such corporation, books, in which shall be recorded the amount of capital stock subscribed, the names of the owners of stock, the amounts owned by them, respectively; the amount of stock paid, and by whom; the transfer of said stock, with the date of transfer; the amount of its assets and liabilities, and the names and places of residence of its officers, and such other matters required by law or by order of the corporation commission. The directors of every railroad company, or other public service corporation, shall hold at least one meeting annually in this State, public notice of which shall be given thirty days previously, and the president or superintendent of every railroad company and other public-service corporation organized or doing business in this State under the laws of this State or the authority thereof, shall report annually under oath, and make such other reports as may be required by law or order of the corporation commission, to said commission their acts and doings, which report shall include such matters relating to railroads and other public service corporations as may be prescribed by law. The legislature shall pass all necessary laws enforcing, by suitable penalties, all the provisions in this section.

SEC. 7. The rolling stock and all other movable property belonging to any railroad, transportation, transmission, or other public corporation in this State, shall be considered personal property, and its real and personal property, or any part thereof, shall be liable to

execution and sale in the same manner as the property of individuals; and the legislature shall pass no laws exempting any such property from execution and sale.

SEC. 8. No public-service corporation, or the lessees, purchasers, or managers thereof, shall consolidate the stock, property, or franchises, of such corporation with, or lease or purchase the works or franchises of, or in any way control, any other public-service corporations owning or having under its control a parallel or competing line; except by enactment of the legislature upon the recommendation of the incorporated commission: *Provided, however*, That the legislature shall never enact any law permitting any public-service corporation, the lessees, purchasers, or managers thereof, when such public-service corporation is organized under the laws of any other State, or of the United States, to consolidate the stock, property, or franchises, of such corporation with, or lease, or purchase, the works of, franchises of, or in any way control, any other public-service corporation, organized under the laws of any other State, or of the United States, owning or having under its control in this State a parallel or competing line; nor shall any officer of such corporation act as an officer of any other corporation owning or controlling a parallel or competing line.

SEC. 9. Neither shall any railroad company, transportation company, or transmission company organized under the laws in this State, consolidate by private or judicial sale, or otherwise, with any railroad company, transportation company, or transmission company organized under the laws of any other State, or of the United States.

SEC. 10. No law shall be passed by the legislature granting the right to construct and operate a street railroad within any city, town, or village, or upon any public highway, without first acquiring the consent of the local authorities having control of the street or highway proposed to be occupied by such street railroad.

SEC. 11. No railroad, transportation, transmission, or other public-service corporation in existence at the time of the adoption of this constitution, shall have the benefit of any future legislation, except on condition of complete acceptance of all the provisions of this constitution, applicable to railroads, transportation companies, transmission companies, and other public service corporations: *Provided*, That nothing herein shall be construed as validating any charter which may be invalid, or having any of the conditions contained in any charter.

SEC. 12. No railroad company shall transport, within this State, any article or commodity manufactured, mined, or produced by it, or under its authority, or which it may own, in whole or in part, or in which it may have any interest direct or indirect, except such articles or commodities as may be necessary and intended for the use in the conduct of its business as a common carrier.

SEC. 13. No railroad or transportation company or transmission company shall, directly or indirectly, issue or give any free frank or free ticket, free pass or other free transportation, for any use, within this State, except to its employees and their families, its officers, agents, surgeons, physicians, and attorneys at law; to ministers of religion, traveling secretaries for railroad Young Men's Christian Associations, inmates of hospitals and charitable and eleemosynary institutions and persons exclusively engaged in charitable and elee-

mosynary work; to indigent, destitute and homeless persons, and to such persons when transported by charitable societies or hospitals, and the necessary agents, employed in such transportations; to inmates of the National Homes or State Homes for Disabled Volunteer Soldiers, and of soldiers' and sailors' homes, including those about to enter and those returning home after discharge, and boards of managers of such homes; to members of volunteer fire departments and their equipage while traveling as such; to necessary caretakers of live stock, poultry, and fruit; to employees of sleeping cars, of express cars, and to linemen of telegraph and telephone companies; to railway mail service employees, post-office inspectors, customs inspectors, and immigration inspectors; to newsboys on trains, baggage agents, witnesses attending any legal investigation in which the railroad company or transportation company is interested, persons injured in wrecks, and physicians and nurses attending such persons: *Provided*, That this provision shall not be construed to prohibit the interchange of passes for the officers, agents, and employees of common carriers and their families; nor to prohibit any common carriers from carrying passengers free with the object of providing relief in cases of general epidemic, pestilence, or other calamitous visitation; nor to prevent them from transporting, free of charge, to their places of employment persons entering their service, and the interchange of passes to that end; and any railroad, transportation, or transmission company or any person, other than the persons excepted in this provision, who grants or uses any such free frank, free ticket, free pass, or free transportation within this State, shall be deemed guilty of a crime, and the legislature shall provide proper penalties for the violation of any provision of this section by the railroad or transportation or transmission company, or by any individual: *Provided*, That nothing herein shall prevent the legislature from extending these provisions so as to exclude such free transportations or franks from other persons.

SEC. 14. No railroad hereafter constructed in this State shall pass within a distance of 4 miles of any county seat without passing through the same and establishing and maintaining a depot therein, unless prevented by natural obstacles such as streams, hills, or mountains: *Provided*, Such town, or its citizens, shall grant the right of way through its limits and sufficient ground for ordinary depot purposes.

CORPORATION COMMISSION.

SEC. 15. A corporation commission is hereby created, to be composed of three persons, who shall be elected by the people at a general election for State officers, and their terms of office shall be six years: *Provided*, Corporation commissioners first elected under this constitution shall hold office as follows: I shall serve until the second Monday in January, 1909; 1 until the second Monday in January, 1911; and 1 until the second Monday in January, 1913; their terms to be decided by lot immediately after they shall have qualified. In case of a vacancy in said office, the governor of the State shall fill such vacancy by appointment until the next general election, when a successor shall be elected to fill out any unexpired term.

SEC. 16. The qualifications of such commissioners shall be as follows: To be resident citizens of this State for over two years next preceding the election, and qualified voters under the constitution and laws, and not less than 30 years of age; nor shall such commissioners, or either of them, be, directly or indirectly, interested in any railroad, street railway, traction line, canal, steamboat, pipe line, car line, sleeping-car line, car association, express line, telephone or telegraph line, operated for hire, in this State, or out of it, or any stock, bond, mortgage, security, or earnings of any such railroad, street railway, traction line, canal, steamboat, pipe line, car line, sleeping-car line, car association, express line, telephone or telegraph line, compress or elevator companies; and if such commissioner shall voluntarily become so interested, his office shall become vacant; and if any corporation commissioner shall become so interested otherwise than voluntarily, he shall, within a reasonable time, divest himself of such interest; and failing to do this, his office shall become vacant. Nor shall any such commissioner hold any other office under the Government of the United States, or of this State or any other State government, and shall not, while such commissioner, engage in any occupation or business inconsistent with his duties as such commissioner.

SEC. 17. Before entering upon the duties of his office each of said commissioners shall take and subscribe to the oath of office as prescribed in this constitution and shall, in addition thereto, swear that he is not, directly or indirectly, interested in any railroad, street railway, traction iine, canal, steamboat, pipe line, car line, sleeping-car line, car association, express line, telephone or telegraph line, nor in the bonds, stocks, mortgages, securities, contract, or earnings of any railroad, street railway, traction line, canal, steamboat, pipe line, car line, sleeping-car line, car association, express line, telephone or telegraph line; and that he will, to the best of his ability, faithfully and justly execute and enforce the provisions of this constitution, and all the laws of this State concerning railroads, street railways, traction lines, canals, steamboats, pipe lines, car lines, sleeping-car lines, car associations, express lines, telephone and telegraph lines, compress and elevator companies, and all other corporations over which said commission has jurisdiction, which oath shall be filed with the secretary of state.

SEC. 18. The commission shall have the power and authority and be charged with the duty of supervising, regulating, and controlling all transportation and transmission companies doing business in this State, in all matters relating to the performance of their public duties and their charges therefor, and of correcting abuses and preventing unjust discrimination and extortion by such companies; and to that end the commission shall, from time to time, prescribe and enforce against such companies, in the manner hereinafter authorized, such rates, charges, classifications of traffic, and rules and regulations, and shall require them to establish and maintain all such public service, facilities, and conveniences as may be reasonable and just, which said rates, charges, classifications, rules, regulations, and requirements, the commission may, from time to time, alter or amend. All rates, charges, classifications, rules and regulations adopted, or acted upon, by any such company, inconsistent with those prescribed by the commission, within the scope of

its authority, shall be unlawful and void. The commission shall also have the right, at all times, to inspect the books and papers of all transportation and transmission companies doing business in this State, and to require from such companies, from time to time, special reports and statements, under oath, concerning their business; it shall keep itself fully informed of the physical condition of all the railroads of the State, as to the manner in which they are operated, with reference to the security and accommodation of the public, and shall, from time to time, make and enforce such requirements, rules, and regulations as may be necessary to prevent unjust or unreasonable discrimination and extortion by any transportation or transmission company in favor of, or against any person, locality, community, connecting line, or kind of traffic, in the matter of car service, train or boat schedule, efficiency of transportation, or transmission, or otherwise, in connection with the public duties of such company. Before the commission shall prescribe or fix any rate, charge, or classification of traffic, and before it shall make any order, rule, regulation, or requirement directed against any one or more companies by name, the company or companies to be affected by such rate, charge, classification, order, rule, regulation, or requirement, shall first be given, by the commission, at least ten days' notice of the time and place when and where the contemplated action in the premises will be considered and disposed of, and shall be afforded a reasonable opportunity to introduce evidence and to be heard thereon, to the end that justice may be done, and shall have process to enforce the attendance of witnesses; and before said commission shall make or prescribe any general order, rule, regulation, or requirement, not directed against any specific company or companies by name, the contemplated general order, rule, regulation, or requirement shall first be published in substance, not less than once a week, for four consecutive weeks, in one or more of the newspapers of general circulation published in the county in which the capitol of this State may be located, together with the notice of the time and place, when and where the commission will hear any objections which may be urged by any person interested, against the proposed order, rule, regulation, or requirement; and every such general order, rule, regulation, or requirement, made by the commission, shall be published at length, for the time and in the manner above specified, before it shall go into effect, and shall also, so long as it remains in force, be published in each subsequent annual report of the commission. The authority of the commission (subject to review on appeal as hereinafter provided) to prescribe rates, charges, and classifications of traffic, for transportation and transmission companies, shall, subject to regulation by law, be paramount; but its authority to prescribe any other rules, regulations or requirements for corporations or other persons shall be subject to the superior authority of the legislature to legislate thereon by general laws: *Provided, however*, That nothing in this section shall impair the rights which have heretofore been, or may hereafter be, conferred by law upon the authorities of any city, town, or county to prescribe rules, regulations, or rates of charges to be observed by any public-service corporation in connection with any services performed by it under a municipal or county franchise granted by such city, town, or county, so far as such services may be wholly within the limits of the city,

town, or county granting the franchise. Upon the request of the parties interested, it shall be the duty of the commission, as far as possible, to effect, by mediation, the adjustment of claims, and the settlement of controversies between transportation or transmission companies and their patrons or employees.

SEC. 18a. The corporation commission shall organize by electing one of its members chairman and appointing a secretary, whose salary shall be fixed by the legislature. A majority of said commission shall constitute a quorum, and the concurrence of the majority of said commission shall be necessary to decide any question.

SEC. 18b. As used in this article, the term "company" shall include associations and joint stock companies having any power or privileges not possessed by individuals, and include all corporations except municipal corporations and public institutions owned or controlled by the State.

SEC. 19. In all matters pertaining to the public visitation, regulation, or control of corporations, and within the jurisdiction of the commission, it shall have the powers and authority of a court of record to administer oaths, to compel the attendance of witnesses, and the production of papers, to punish for contempt any person guilty of disrespectful or disorderly conduct in the presence of the commission while in session, and to enforce compliance with any of its lawful orders or requirements by adjudging, and by enforcing its own appropriate process, against the delinquent or offending party or company (after it shall have been first duly cited, proceeded against by due process of law before the commission sitting as a court, and afforded opportunity to introduce evidence and to be heard, as well as against the validity, justness, or reasonableness of the order or requirement alleged to have been violated, as against the liability of the company for the alleged violation) such fines or other penalties as may be prescribed or authorized by this constitution or by law. The commission may be vested with such additional powers, and charged with such other duties (not inconsistent with this constitution) as may be prescribed by law, in connection with the visitation, regulation, or control of corporations, or with the prescribing and enforcing of rates and charges to be observed in the conduct of any business where the State has the right to prescribe the rates and charges in connection therewith, or with the assessment of the property of corporations, or the appraisement of their franchises, for taxation, or with the investigation of the subject of taxation generally. Any corporation failing or refusing to obey any valid order or requirement of the commission, within reasonable time, not less than ten days, as shall be fixed in the order, may be fined by the commission (proceeding by due process of law as aforesaid) such sum, not exceeding $500, as the commission may deem proper, or such sum, in excess of $500, as may be prescribed or authorized by law; and each day's continuance of such failure or refusal, after due service upon such corporation of the order or requirement of the commission, shall be a separate offense: *Provided*, That should the operation of such order or requirement be suspended, pending any appeal therefrom, the period of such suspension shall not be computed against the company in the matter of its liability to fines or penalties.

SEC. 20. From any action of the commission prescribing rates, charges, or classifications of traffic, or affecting the train schedule of

any transportation company, or requiring additional facilities, conveniences, or public service of any transportation or transmission company, or refusing to approve a suspending bond, or requiring additional security thereon or an increase thereof, as hereinafter provided for, an appeal (subject to such reasonable limitations as to time, regulations as to procedure and provisions as to cost, as may be prescribed by law) may be taken by the corporation whose rates, charges, or classifications of traffic, schedule, facilities, conveniences, or service, are affected, or by any person deeming himself aggrieved by such action, or (if allowed by law) by the State. Until otherwise provided by law, such appeal shall be taken in the manner in which appeals may be taken to the supreme court from the district courts, except that such an appeal shall be of right, and the supreme court may provide by rule for proceedings in the matter of appeals in any particular in which the existing rules of law are inapplicable. If such appeal be taken by the corporation whose rates, charges, or classifications of traffic, schedules, facilities, conveniences, or service are affected, the State shall be made the appellee; but, in the other cases mentioned, the corporation so affected shall be made the appellee. The legislature may also, by general laws, provide for appeals from any other action of the commission, by the State, or by any person interested, irrespective of the amount involved. All appeals from the commission shall be to the supreme court only, and in all appeals to which the State is a party, it shall be represented by the attorney-general or his appointed representative. No court of this State (except the supreme court, by way of appeals as herein authorized) shall have jurisdiction to review, reverse, correct, or annul any action of the commission within the scope of its authority, or to suspend or delay the execution or operation thereof, or to enjoin, restrain, or interfere with the commission in the performance of its official duties: *Provided, however*, That the writs of mandamus and prohibition shall lie from the supreme court to the commission in all cases where such writs, respectively, would lie to any inferior court or officer.

SEC. 21. Upon the granting of an appeal, a writ of supersedeas may be awarded by the supreme court, suspending the operation of the action appealed from until the final disposition of the appeal; but, prior to the final reversal thereof by the supreme court, no action of the commission prescribing or affecting the rates, charges, or classifications of traffic of any transportation or transmission company shall be delayed, or suspended, in its operation, by reason of any appeal by such corporation, or by reason of any proceeding resulting from such appeal, until a suspending bond shall first have been executed and filed with, and approved by the commission (or approved, on review, by the supreme court), payable to the State, and sufficient in amount and security to insure the prompt refunding, by the appealing corporation to the parties entitled thereto, of all charges which such company may collect or receive, pending the appeal, in excess of those fixed, or authorized, by the final decision of the court on appeal. The commission, upon the execution of such bond, shall forthwith require the appealing company, under penalty of the immediate enforcement (pending the appeal and notwithstanding and supersedeas), of the order or requirement appealed from, to keep such accounts, and to make the commission, from time to time, such reports, verified by oath, as may, in the judgment of the com-

mission, suffice to show the amounts being charged or received by the company, pending the appeal, in excess of the charge allowed by the action of the commission appealed from, together with the names and addresses of the persons to whom such overcharges will be refundable in case the charges made by the company, pending the appeal, be not sustained on such appeal; and the commission shall also, from time to time, require such company, under like penalty, to give additional security on, or to increase the said suspending bond, whenever, in the opinion of the commission, the same may be necessary to insure the prompt refunding of the overcharges aforesaid. Upon the final decision of such appeal, all amounts which the appealing company may have collected, pending the appeal, in excess of that authorized by such final decision, shall be promptly refunded by the company to the parties entitled thereto, in such manner and through such methods of distribution as may be prescribed by the commission, or by law. All such appeals, affecting rates, charges, or classifications of traffic, shall have precedence upon the docket of the supreme court, and shall be heard and disposed of promptly by the court, irrespective of its place of session, next after the habeas corpus, and State cases already on the docket of the court.

SEC. 22. In no case of appeal from the commission shall any new or additional evidence be introduced in the supreme court; but the chairman of the commission, under the seal of the commission, shall certify to the supreme court all the facts upon which the action appealed from was based and which may be essential for the proper decision of the appeal, together with such of the evidence introduced before, or considered by, the commission as may be selected, specified, and required to be certified, by any party in interest, as well as such other evidence, so introduced or considered as the commission may deem proper to certify. The commission shall, whenever an appeal is taken therefrom, file with the record of the case, and as a part thereof, a written statement of the reasons upon which the action appealed from was based, and such statement shall be read and considered by the supreme court, upon disposing of the appeal. The supreme court shall have jurisdiction, on such appeal, to consider and determine the reasonableness and justness of the action of the commission appealed from, as well as any other matter arising under such appeal: *Provided, however*, That the action of the commission appealed from shall be regarded as prima facie just, reasonable, and correct; but the court may, when it deems necessary, in the interest of justice, remand to the commission any case pending on appeal, and require the same to be further investigated by the commission, and reported upon to the court (together with a certificate of such additional evidence as may be tendered before the commission by any party in interest), before the appeal is finally decided.

SEC. 23. Whenever the court, upon appeal, shall reverse an order of the commission affecting the rates, charges, or the classifications of traffic of any transportation or transmission company, it shall, at the same time, substitute therefor such orders as, in its opinion, the commission should have made at the time of entering the order appealed from; otherwise the reversal order shall not be valid. Such substituted order shall have the same force and effect (and none other) as if it had been entered by the commission at the time the original

order appealed from was entered. The right of the commission to prescribe and enforce rates, charges, classifications, rules and regulations affecting any or all actions of the commission theretofore entered by it and appealed from, but based upon circumstances or conditions different from those existing at the time the order appealed from was made, shall not be suspended or impaired by reason of the pendency of such appeal; but no order of the commission, prescribing or altering such rates, charges, classifications, rules, or regulations, shall be retroactive.

SEC. 24. The right of any person to institute and prosecute in the ordinary courts of justice, any action, suit, or motion against any transportation or transmission company for any claim or cause of action against such company, shall not be extinguished or impaired, by reason of any fine or other penalty which the commission may impose, or be authorized to impose, upon such company because of its breach of any public duty, or because of its failure to comply with any order or requirement of the commission; but, in no such proceeding by any person against such corporation, nor in any collateral proceeding shall the reasonableness, justness, or validity of any rate, charge, classification of traffic, rule, regulation, or requirement, theretofore prescribed by the commission, within the scope of its authority, and then in force, be questioned. *Provided, however*, That no case based upon or involving any order of the commission shall be heard or disposed of, against the objection of either party, so long as such order is suspended in its operation by an order of the supreme court as authorized by this constitution or by any law passed in pursuance thereof.

SEC. 25. The commission shall make annual reports to the governor of its proceedings, in which reports it shall recommend, from time to time, such new or additional legislation in reference to its powers or duties, or the creation, supervision, regulation, or control of corporations, or to the subject of taxation, as it may deem wise or expedient, or as may be required by law.

SEC. 26. It shall be the duty of each and every railway company, subject to the provisions herein, to provide and maintain adequate, comfortable, and clean depots, and depot buildings, at its several stations, for the accommodation of passengers, and said depot buildings shall be kept well lighted and warmed for the comfort and accommodation of the traveling public; and all such roads shall keep and maintain adequate and suitable freight depots and buildings for the receiving, handling, storing, and delivering of all freight handled by such roads.

SEC. 27. In case any railroad company shall hereafter seek to cross at grade with its track or tracks, the track or tracks of another railroad, the railroad seeking to cross at grade, within a reasonable time, shall be compelled to interlock or protect such crossings by safety devices, to be designated by the commission, and all costs of appliance, together with the expenses of putting them in, shall be borne equally by each company: *Provided*, That this act shall not apply to crossings of sidetracks.

SEC. 28. The commissioners, or either of them, or such persons as they may employ therefor, shall have the right, at such times as they may deem necessary, to inspect the books and papers of any railroad company or other public-service corporation, and to examine, under

oath, any officer, agent, or employee of such corporation in relation to the business and affairs of the same. If any railroad company or other public-service corporation shall refuse to permit the commissioners, or either of them, or any person authorized thereto, to examine its books and papers, such railroad company or other public-service corporation shall, until otherwise provided by law, for each offense, pay to the State of Oklahoma not less than $125, nor more than $500, for each day it shall so fail or refuse, and the officer or other person so refusing shall be punished as the law shall prescribe.

SEC. 29. The commission shall ascertain, and enter of record, the same to be a public record, as early as practicable, the amount of money expended in construction and equipment per mile of every railroad and other public-service corporation in Oklahoma, the amount of money expended to procure the right of way, and the amount of money it would require to reconstruct the roadbed, track, depots, and transportation facilities, and to replace all the physical properties belonging to the railroad or other public-service corporation. It shall also ascertain the outstanding bonds, debentures, and indebtedness, and the amount, respectively, thereof, when issued, and rate of interest, when due, for what purposes issued, how used, to whom issued, to whom sold, and the price in cash, property, or labor, if any, received therefor, what became of the proceeds, by whom the indebtedness is held, the amount purporting to be due thereon, the floating indebtedness of the company, to whom due, and his address, the credits due on it, the property on hand belonging to the railroad company or other public-service corporation, and the judicial or other sales of said road, its property or franchises, and the amounts purporting to have been paid, and in what manner paid therefor. The commission shall also ascertain the amounts paid for salaries to the officers of the railroad, or other public-service corporation, and the wages paid its employees. For the purpose in this section named, the commission may employ experts to assist them when needed, and from time to time, as the information required by this section is obtained, it shall communicate the same to the attorney-general by report, and file a duplicate thereof with the state examiner and inspector for public use, and said information shall be printed, from time to time, in the annual report of the commission.

SEC. 30. No transportation or transmission company shall charge or receive any greater compensation, in the aggregate, for transporting the same class of passengers or property, or for transmitting the same class of messages, over a shorter than a longer distance, along the same line and in the same direction—the shorter being included in the longer distance; but this section shall not be construed as authorizing any such company to charge or receive as great compensation for a shorter as for a longer distance. The commission may, from time to time, authorize any such company to disregard the foregoing provisions of this section, by charging such rates as the commission may prescribe as just and equitable between such company and the public, to or from any junctional or competitive points or localities, or where the competition of points located without this State may make necessary the prescribing of special rates for the protection of the commerce of this State; but this section shall not

apply to mileage tickets, or to any special excursion, or commutation rates, or to special rates for services rendered to this State, or to the United States, or in the interest of some public object, when such tickets or rates shall have been prescribed or authorized by the commission.

SEC. 31. No railroad, oil pipe line, telephone, telegraph, express or car corporation organized under the laws of any other State, or of the United States, and doing business, or proposing to do business in this State, shall be entitled to the benefit of the right of eminent domain in this State until it shall have become a body corporate pursuant to or in accordance with the laws of this State.

SEC. 32. The said commission shall have power, and it is hereby made its duty, to investigate all through freight or passenger rates on railroads in this State, and when the same are, in the opinion of the commission, excessive or levied or laid in violation of the interstate commerce law, or the rules and regulations of the Interstate Commerce Commission, the proper officials of the railroads are to be notified of the facts and requested to reduce them or make the proper corrections, as the case may be. When the rates are not changed, or the proper corrections are not made according to the request of the commission, it shall be the duty of the latter to notify the Interstate Commerce Commission and to make proper application to it for relief, and the attorney-general or such other persons as may be designated by law shall represent the commission in all such matters.

SEC. 33. Any person, firm, or corporation owning or operating any coal, lead, iron, or zinc mine, or any sawmill, grain elevator, or other industry, whenever the commission shall reasonably determine that the amount of business is sufficient to justify the same, near or within a reasonable distance of any track, may, at the expense of such person, firms, or corporation build and keep in repair a switch leading from such railroad to such mine, sawmill, elevator or other industry; such railroad company shall be required to furnish the switch stand and frog and other necessary material for making connection with such sidetrack or spur under such reasonable terms, conditions, and regulations as the said commission may prescribe, and shall make connection therewith. The party owning such line, sawmill, elevator, or other industry shall pay the actual cost thereof. If any railroad company, after proper demand therefor is made, shall refuse to furnish said material for making said connection and put the same in place, or after the building of such switch, shall fail or refuse to operate the same, such railroad company failing and refusing for a reasonable time, shall forfeit and pay to the party or corporation aggrieved, the sum of $500 for each and every offense, to be recovered by civil action in any court of competent jurisdiction; and every day of such refusal on the part of the railroad company to operate such switch as aforesaid, after such demand is made, shall be deemed a separate offense.

SEC. 34. As used in this article, the term "transportation company" shall include any company, corporation, trustee, receiver, or any other person owning, leasing, or operating for hire a railroad, street railway, canal, steamboat line, and also any freight car company, car association, express company, sleeping-car company, car corporation, or company, trustee or person in any way engaged in

such business as a common carrier over a route acquired in whole or in part under the right of eminent domain, or under any grant from the Government of the United States; the term "rate" shall be construed to mean rate of charge for any service rendered, or to be rendered; the terms "rate," "charge," and "regulation," shall include joint rates, joint charges, and joint regulations, respectively; the term "transmission company" shall include any company, receiver or other person, owning, leasing, or operating for hire any telegraph or telephone line; the term "freight" shall be construed to mean any property transported or received for transportation by any transportation company. The term "public-service corporation" shall include all transportation and transmission companies, all gas, electric light, heat and power companies, and all persons authorized to exercise the right of eminent domain, or to use or occupy any right of way, street, alley, or public highway, whether along, over, or under the same, in a manner not permitted to the general public; the term "person" as used in this article, shall include individuals, partnerships and corporations in the singular as well as plural number; the term "bond" shall mean all certificates or written evidences of indebtedness issued by any corporation and secured by mortgage or trust deed. The term "frank" shall mean any writing or token issued by or under authority of a transmission company, entitling the holder to any service from such company free of charge.

The provisions of this article shall always be so restricted in their application as not to conflict with any of the provisions of the Constitution of the United States, and as if the necessary limitations upon their interpretation had been herein expressed in each case.

SEC. 35. After the second Monday in January, 1909, the legislature may, by law, from time to time, alter, amend, revise, or repeal sections from 18 to 34, inclusive, of this article, or any of them, or any amendments thereof: *Provided*, That no amendment made under authority of this section shall controvene the provisions of any part of this constitution other than the said sections last above referred to or any such amendments thereof.

FELLOWSERVANTS.

SEC. 36. The common law doctrine of the fellow-servant, so far as it affects the liability of the master for injuries to his servant, resulting from the acts or omissions of any other servant or servants of the common master, is abrogated as to every employee of every railroad company and every street railway company or interurban railway company, and of every person, firm, or corporation engaged in mining in this State; and every such employee shall have the same right to recover for every injury suffered by him for the acts or omissions of any other employee or employees of the common master that a servant would have if such acts or omissions were those of the master himself in the performance of a nonassignable duty; and when death, whether instantaneous or not, results to such employee from any injury for which he could have recovered under the above provisions, had not death occurred, then his legal or personal representative, surviving consort, or relatives, or any trustee, curator, committee, or guardian of

such consort, or relatives, shall have the same rights and remedies with respect thereto, as if death had been caused by the negligence of the master. And every railroad company and every street railway company or interurban railway company, and every person, firm, or corporation engaged in underground mining in this State shall be liable under this section for the acts of his or its receivers.

Nothing contained in this section shall restrict the power of the legislature to extend to the employees of any person, firm, or corporation the rights and remedies herein provided for.

PASSENGER FARE.

SEC. 37. No person, company, or corporation, receiver, or other agency, operating a railroad, other than street railroad or electric railroad, in whole or in part, within this State, shall demand or receive for first-class transportation for each passenger, between points within this State on the portion of its road operated within this State, more than 2 cents per mile, until otherwise provided by law: *Provided, however*, The corporation commission shall have the power to exempt any railroad from the operation of this section upon satisfactory proof that it can not earn a just compensation for the services rendered by it to the public, if not permitted to charge more than 2 cents per mile for the transportation of passengers within the State.

PRIVATE CORPORATIONS.

SEC. 38. No private corporation shall be created nor foreign corporation licensed to conduct business in the State, except by general law.

SEC. 39. No corporation shall issue stock except for money, labor done, or property actually received to the amount of the par value thereof, and all fictitious increase of stock or indebtedness shall be void, and the legislature shall prescribe the necessary regulations to prevent the issue of fictitious stock or indebtedness. The stock and bonded indebtedness of corporations shall not be increased except in pursuance of general law, nor without the consent of the persons holding the larger amount in value of the stock first obtained at a meeting to be held after thirty days' notice given in pursuance of law.

SEC. 40. No corporation organized or doing business in this State shall be permitted to influence elections or official duty by contributions of money or anything of value.

SEC. 41. No corporation chartered or licensed to do business in this State shall own, hold, or control, in any manner whatever, the stock of any competitive corporation or corporations engaged in the same kind of business, in or out of the State, except such stock as may be pledged in good faith to secure bona fide indebtedness acquired upon foreclosure, execution sale, or otherwise for the satisfaction of debt. In all cases where any corporation acquires stock in any other corporation, as herein provided, it shall be required to dispose of the same within twelve months from the date of acquisition; and during the period of its ownership of such stock it shall have no right to

participate in the control of such corporation, except when permitted by order of the corporation commission. No trust company, or bank, or banking company shall own, hold, or control, in any manner whatever, the stock of any other trust company, or bank or banking company, except such stock as may be pledged in good faith to secure bona fide indebtedness, acquired upon foreclosure, execution sale, or otherwise for the satisfaction of debt; and such stock shall be disposed of in the time and manner hereinbefore provided.

SEC. 42. Every license issued or charter granted to a mining or public service corporation, foreign or domestic, shall contain a stipulation that such corporation will submit any difference it may have with employees in reference to labor, to arbitration, as shall be provided by law.

SEC. 43. No corporation, foreign or domestic, shall be permitted to do business in this State without first filing in the office of the corporation commission a list of its stockholders, officers, and directors, with the residence and post office address of, and the amount of stock held by each. And every foreign corporation shall, before being licensed to do business in the State, designate an agent residing in the State; and service of summons or legal notice may be had on such designated agent and such other agents as now are or may hereafter be provided for by law. Suit may be maintained against a foreign corporation in the county where an agent of such corporations may be found, or in the county of the residence of plaintiff, or in the county where the cause of action may arise.

SEC. 44. No foreign corporation shall be authorized to carry on in this State any business which a domestic corporation is prohibited from doing, or be relieved from compliance with any of the requirements made of a similar domestic corporation by the constitution or laws of the State. Nothing in this article, however, shall restrict or limit the power of the legislature to impose conditions under which foreign corporations may be licensed to do business in this State.

SEC. 45. Until otherwise provided by law, no person, firm, association, or corporation engaged in the production, manufacture, distribution, or sale of any commodity of general use, shall, for the purpose of creating a monopoly or destroying competition in trade, discriminate between different persons, associations, or corporations, or different sections, communities, or cities of the State, by selling such commodity at a lower rate in one section, community, or city than in another, after making due allowance for the difference, if any, in the grade, quantity, or quality, and in the actual cost of transportation from the point of production or manufacture.

SEC. 46. All existing charters or grants of special or exclusive privileges under which a bona fide organization shall not have taken place and business commenced in good faith at the time this constitution becomes effective, shall thereafter have no validity.

SEC. 47. The legislature shall have power to alter, amend, annul, revoke, or repeal any charter of incorporation or franchise now existing and subject to be altered, amended, annulled, revoked, or repealed at the time of the adoption of this constitution, or any that may be hereafter created, whenever in its opinion it may be injurious to the citizens of this State, in such manner, however, that no injustice shall be done to the incorporators

SEC. 48. The legislature shall provide such penalties and regulations as may be necessary for the proper enforcement of the provisions of this article.

ARTICLE X.

REVENUE AND TAXATION.

SECTION 1. The fiscal year shall commence on the 1st day of July in each year, unless otherwise provided by law.

SEC. 2. The legislature shall provide by law for an annual tax sufficient, with other resources, to defray the estimated ordinary expenses of the State for each fiscal year.

SEC. 3. Whenever the expenses of any fiscal year shall exceed the income, the legislature may provide for levying a tax for the ensuing fiscal year, which, with other resources, shall be sufficient to pay the deficiency, as well as the estimated ordinary expenses of the State for the ensuing year.

SEC. 4. For the purpose of paying the State debt, if any, the legislature shall provide for levying a tax, annually, sufficient to pay the annual interest and principal of such debt within 25 years from the final passage of the law creating the debt.

SEC. 5. The power of taxation shall never be surrendered, suspended, or contracted away. Taxes shall be uniform upon the same class of subjects.

SEC. 6. All property used for free public libraries, free museums, public cemeteries, property used exclusively for schools, colleges, and all property used exclusively for religious and charitable purposes, and all property of the United States, and of this State, and of counties and of municipalities of this State; household goods of the heads of families, tools, implements, and live stock employed in the support of the family, not exceeding $100 in value, and all growing crops, shall be exempt from taxation: *Provided*, That all property not herein specified now exempt from taxation under the laws of the Territory of Oklahoma, shall be exempt from taxation until otherwise provided by law: *And provided further*, That there shall be exempt from taxation to all ex-Union and exConfederate soldiers; bona fide residents of this State, and to all widows of ex-Union and ex-Confederate soldiers, who are heads of families and bona fide residents of this State, personal property not exceeding $200 in value.

All property owned by the Murrow Indian Orphan Home, located in Coal County, and all property owned by the Whittaker Orphan Home, located in Mayes County, so long as the same shall be used exclusively as free homes or schools for orphan children, and for poor and indigent persons, and all fraternal orphan homes, and other orphan homes, together with all their charitable funds, shall be exempt from taxation, and such property as may be exempt by reason of treaty stipulations, existing between the Indians and the United States Government, or by Federal laws, during the force and effect of such treaties or Federal laws. The legislature may authorize any incorporated city or town, by a majority vote of its electors voting thereon, to exempt manufacturing establishments and public utilities from municipal taxation, for a period not exceeding five years, as an inducement to their location.

SEC. 7. The legislature may authorize county and municipal corporations to levy and collect assessments for local improvements upon property benefited thereby, homesteads included, without regard to a cash valuation.

SEC. 8. All property which may be taxed advalorem shall be assessed for taxation at its fair cash value, estimated at the price it would bring at a fair voluntary sale; and any officer or other person authorized to assess values, or subjects, for taxation, who shall commit any wilful error in the performance of his duty, shall be deemed guilty of malfeasance, and upon conviction thereof shall forfeit his office, and be otherwise punished as may be provided by law.

SEC. 9. Except as herein otherwise provided, the total taxes, on an advalorem basis, for all purposes, State, county, township, city, or town, and school district taxes, shall not exceed in any one year 31½ mills on the dollar, to be divided as follows:

State levy, not more than 3½ mills; county levy, not more than 8 mills: *Provided*, That any county may levy not exceeding 2 mills additional for county high school and aid to the common schools of the county, not over 1 mill of which shall be for such high school, and the aid to said common schools shall be apportioned as provided by law; township levy, not more than 5 mills; city or town levy, not more than 10 mills; school district levy, not more than 5 mills on the dollar for school district purposes, for support of common school; *Provided*, That the aforesaid annual rate for school purposes may be increased by any school district by an amount not to exceed 10 mills on the dollar valuation, on condition that a majority of the voters thereof voting at an election vote for said increase.

SEC. 10. For the purpose of erecting public buildings in counties, cities, or school districts, the rates of taxation herein limited may be increased, when the rate of such increase and the purpose for which it is intended shall have been submitted to a vote of the people, and a majority of the qualified voters of such county, city, or school district, voting at such election, shall vote therefor: *Provided*, That such increase shall not exceed 5 mills on the dollar of the assessed value of the taxable property in such county, city, or school district.

SEC. 11. The receiving, directly or indirectly, by any officer of the State, or of any county, city, or town, or member or officer of the legislature, of any interest, profit, or perquisites, arising from the use or loan of public funds in his hands or moneys to be raised through his agency for State, city, town, district, or county purposes shall be deemed a felony. Said offense shall be punished as may be prescribed by law, a part of which punishment shall be disqualification to hold office.

SEC. 12. The legislature shall have power to provide for the levy and collection of license, franchise, gross revenue, excise, income, collateral and direct inheritance, legacy, and succession taxes; also graduated income taxes, graduated collateral and direct inheritance taxes, graduated legacy and succession taxes; also stamp, registration, production, or other specific taxes.

SEC. 13. The State may select its subjects of taxation, and levy and collect its revenues independent of the counties, cities, or other municipal subdivisions.

SEC. 14. Taxes shall be levied and collected by general laws, and for public purposes only, except that taxes may be levied when necessary to carry into effect section 31 of the bill of rights. Except as required by the enabling act, the State shall not assume the debt of any county, municipal corporation, or political subdivision of the State, unless such debt shall have contracted to defend itself in time of war, to repel invasion, or to suppress insurrection.

SEC. 15. The credit of the State shall not be given, pledged, or loaned to any individual, company, corporation, or association, municipality, or political subdivision of the State; nor shall the State become an owner or stockholder in, nor make donation by gift, subscription to stock, by tax or otherwise, to any company, association, or corporation.

SEC. 16. All laws authorizing the borrowing of money by and on behalf of the State, county, or other political subdivision of the State, shall specify the purpose for which the money is to be used, and the money so borrowed shall be used for no other purpose.

SEC. 17. The legislature shall not authorize any county or subdivision thereof, city, town, or incorporated district, to become a stockholder in any company, association, or corporation, or to obtain or appropriate money for, or levy any tax for, or to loan its credit to any corporation, association, or individual.

SEC. 18. The legislature may authorize the levy and collection of a poll tax on all electors of this State, under 60 years of age, not exceeding $2 per capita, per annum, and may provide a penalty for the nonpayment thereof.

SEC. 19. Every act enacted by the legislature, and every ordinance and resolution passed by any county, city, town, or municipal board or local legislative body, levying a tax, shall specify distinctly the purpose for which said tax is levied, and no tax levied and collected for one purpose shall ever be devoted to another purpose.

SEC. 20. The legislature shall not impose taxes for the purpose of any county, city, town, or other municipal corporation, but may, by general laws, confer on the proper authorities thereof, respectively, the power to assess and collect such taxes.

SEC. 21. There shall be a state board of equalization consisting of the governor, state auditor, state treasurer, secretary of state, attorney-general, state inspector and examiner, and president of the board of agriculture. The duty of said board shall be to adjust and equalize the valuation of real and personal property of the several counties in the State, and it shall perform such other duties as may be prescribed by law, and they shall assess all railroad and public service corporation property.

SEC. 22. Nothing in this constitution shall be held or construed to prevent the classification of property for purposes of taxation; and the valuation of different classes by different means or methods.

PUBLIC INDEBTEDNESS.

SEC. 23. The State may, to meet casual deficits or failure in revenues, or for expenses not provided for, contract debts; but such debts, direct and contingent, singly or in the aggregate, shall not, at any time, exceed $400,000, and the moneys arising from the loans creating such debts shall be applied to the purpose for which they were

obtained or to repay the debts so contracted, and to no other purpose whatever.

SEC. 24. In addition to the above limited power to contract debts, the State may contract debts to repel invasion, suppress insurrection or to defend the State in war; but the money arising from the contracting of such debts shall be applied to the purpose for which it was raised, or to repay such debts, and to no other purpose whatever.

SEC. 25. Except the debts specified in sections 23 and 24 of this article, no debts shall hereafter be contracted by or on behalf of this State, unless such debt shall be authorized by law for some work or object, to be distinctly specified therein; and such law shall impose and provide for the collection of a direct annual tax to pay, and sufficient to pay, the interest on such debt as it falls due and also to pay and discharge the principal of such debt within twenty-five years from the time of the contracting thereof. No such law shall take effect until it shall, at a general election, have been submitted to the people and have received a majority of all the votes cast for and against it at such election. On the final passage of such bill in either house of the legislature, the question shall be taken by yeas and nays, to be duly entered on the journals thereof, and shall be: "Shall this bill pass, and ought the same to receive the sanction of the people?"

SEC. 26. No county, city, town, township, school district, or other political corporation, or subdivision of the State, shall be allowed to become indebted, in any manner, for any purpose, to an amount exceeding, in any year, the income and revenue provided for such year, without the assent of three-fifths of the voters thereof, voting at an election, to be held for that purpose, nor in cases requiring such assent, shall any indebtedness be allowed to be incurred to an amount including existing indebtedness, in the aggregate exceeding 5 per centum of the valuation of the taxable property therein, to be ascertained from the last assessment for State and county purposes previous to the incurring of such indebtedness: *Provided*, That any county, city, town, township, school district, or other political corporation, or subdivision of the State, incurring any indebtedness, requiring the assent of the voters as aforesaid, shall, before or at the time of doing so, provide for the collection of an annual tax sufficient to pay the interest on such indebtedness as it falls due, and also to constitute a sinking fund for the payment of the principal thereof within twenty-five years from the time of contracting the same.

SEC. 27. Any incorporated city or town in this State may, by a majority of the qualified property taxpaying voters of such city or town, voting at an election to be held for that purpose, be allowed to become indebted in a larger amount than that specified in section 26, for the purpose of purchasing or constructing public utilities, or for repairing the same, to be owned exclusively by such city: *Provided*, That any such city or town incurring any such indebtedness requiring the assent of the voters as aforesaid, shall have the power to provide for, and, before or at the time of incurring such indebtedness, shall provide for the collection of an annual tax in addition to the other taxes provided for by this constitution, sufficient to pay the interest on such indebtedness as it falls due, and also to constitute a sinking fund for the payment of the principal thereof within twenty-five years from the time of contracting the same.

SEC. 28. Counties, townships, school districts, cities, and towns shall levy sufficient additional revenue to create a sinking fund to be used, first, for the payment of interest coupons as they fall due; second, for the payment of bonds as they fall due; third, for the payments of such parts of judgments as such municipality may, by law, be required to pay.

SEC. 29. No bond or evidence of indebtedness of this State shall be valid unless the same shall have endorsed thereon a certificate, signed by the auditor and attorney-general of the State, showing that the bond or evidence of debt is issued pursuant to law and is within the debt limit. No bond or evidence of debt of any county, or bond of any township or any other political subdivision of any county, shall be valid unless the same have endorsed thereon a certificate signed by the county clerk, or other officer authorized by law to sign such certificate, and the county attorney of the county, stating that said bond, or evidence of debt, is issued pursuant to law, and that said issue is within the debt limit.

SEC. 30. The legislature shall require all money collected by taxation, or by fees, fines, and public charges of every kind, to be accounted for by a system of accounting that shall be uniform for each class of accounts, State and local, which shall be prescribed and audited by authority of the State.

ARTICLE XI.

STATE AND SCHOOL LANDS.

SECTION 1. The State hereby accepts all grants of land and donations of money made by the United States under the provisions of the enabling act, and any other acts of Congress, for the uses and purposes and upon the conditions, and under the limitations for which the same are granted or donated; and the faith of the State is hereby pledged to preserve such lands and moneys and all moneys derived from the sale of any of said lands as a sacred trust, and to keep the same for the uses and purposes for which they were granted or donated.

SEC. 2. All proceeds of the sale of public lands that have heretofore been or may be hereafter given by the United States for the use and benefit of the common schools of this State, all such per centum as may be granted by the United States on the sales of public lands, the sum of $5,000,000 appropriated to the State for the use and benefit of the common schools in lieu of sections 16 and 36, and other lands of the Indian Territory, the proceeds of all property that shall fall to the State by escheat, the proceeds of all gifts or donations to the State for common schools not otherwise appropriated by the terms of the gifts, and such other appropriations, gifts, or donations as shall be made by the legislature for the benefit of the common schools, shall constitute the permanent school fund, the income from which shall be used for the maintenance of the common schools in the State. The principal shall be deemed a trust fund held by the State, and shall forever remain inviolate. It may be increased, but shall never be diminished. The State shall reimburse said permanent school fund for all losses thereof which may in any manner occur, and no portion of said fund shall be diverted for any other use or purpose.

SEC. 3. The interest and income of the permanent school fund, the net income from the leasing of public lands which have been or may be granted by the United States to the State for the use and benefit of the common schools, together with any revenues derived from taxes authorized to be levied for such purposes, and any other sums which may be added thereto by law, shall be used and applied each year for the benefit of the common schools of the State, and shall be, for this purpose, apportioned among and between all the several common school districts of the State in proportion to the school population of the several districts, and no part of the fund shall ever be diverted from this purpose, or used for any other purpose than the support and maintenance of common schools for the equal benefit of all the people of the State.

SEC. 4. All public lands set apart to the State by Congress for charitable, penal, educational, and public building purposes, and all lands taken in lieu thereof, may be sold by the State under such rules and regulations as the legislature may prescribe, in conformity with the regulations of the enabling act.

SEC. 5. Section 13 in every portion of the State which has been granted to the State shall be preserved for the use and benefit of the University of Oklahoma and the University Preparatory School, one-third; of the normal schools now established, or hereafter to be established, one-third; and of the Agricultural and Mechanical College and Colored Agricultural and Normal University, one-third. The said lands or the proceeds thereof as above apportioned to be divided between the institutions as the legislature may prescribe: *Provided*, That the said lands so reserved, or the proceeds of the sale thereof, or of any indemnity lands granted in lieu of section 13 shall be safely kept or invested and preserved by the State as a trust, which shall never be diminished, but may be added to, and the income thereof, interest, rentals, or otherwise, only shall be used exclusively for the benefit of said educational institutions. Such educational institutions shall remain under the exclusive control of the State and no part of the proceeds arising from the sale or disposal of any lands granted for educational purposes, or the income or rentals thereof, shall be used for the support of any religious or sectarian school, college, or university, and no portion of the funds arising from the sale of sections 13 or any indemnity lands selected in lieu thereof, either principal or interest, shall ever be diverted, either temporarily or permanently, from the purpose for which said lands were granted to the State.

SEC. 6. The permanent common school and other educational funds shall be invested in first mortgages upon good and improved farm lands within the State (and in no case shall more than 50 per centum of the reasonable valuation of the lands without improvements be loaned on any tract), Oklahoma State bonds, county bonds of the counties of Oklahoma, school district bonds of the school districts of Oklahoma, United States bonds; preference to be given to the securities in the order named.

The legislature shall provide the manner of selecting the securities aforesaid, prescribe the rules, regulations, restrictions, and conditions upon which the funds aforesaid shall be loaned or invested, and do all things necessary for the safety of the funds and permanency of the investment.

ARTICLE XII.

HOMESTEAD AND EXEMPTIONS.

SECTION 1. The homestead of any family in this State, not within any city, town, or village, shall consist of not more than 160 acres of land, which may be in one or more parcels, to be selected by the owner. The homestead within any city, town, or village, owned and occupied as a residence only, shall consist of not exceeding 1 acre of land, to be selected by the owner: *Provided*, That the same shall not exceed in value the sum of $5,000, and in no event shall the homestead be reduced to less than one-quarter of an acre, without regard to value: *And provided further*, That in case said homestead is used for both residence and business purposes, the homestead interests therein shall not exceed in value the sum of $5,000: *Provided*, That nothing in the laws of the United States, or any treaties with the Indian tribes in the State, shall deprive any Indian or other allottee of the benefit of the homestead and exemption laws of the State: *And provided further*, That any temporary renting of the homestead shall not change the character of the same when no other homestead has been acquired.

SEC. 2. The homestead of the family shall be, and is hereby protected from forced sale, for the payment of debts, except for the purchase money therefor or a part of such purchase money, the taxes due thereon, or for work and material used in constructing improvements thereon; nor shall the owner, if married, sell the homestead without the consent of his or her spouse, given in such manner as may be prescribed by law: *Provided*, Nothing in this article shall prohibit any person from mortgaging his homestead, the spouse, if any, joining therein, nor prevent the sale thereof on foreclosure to satisfy any mortgage.

SEC. 3. After the adoption of this constitution, paragraph 3 of section 4, and section 5, of chapter 34, statutes of Oklahoma, of 1893, shall be inoperative: *Provided*, That no property shall be exempt for any part of the purchase price while the same or any part thereof remains in the possession of the original vendee, or in possession of any purchaser from such vendee, with notice: *And provided further*, Nothing in this constitution shall prevent or prohibit any person from mortgaging or encumbering his personal exemptions.

The legislature may change or amend the terms of this article.

ARTICLE XIII.

Education.

SECTION 1. The legislature shall establish and maintain a system of free public schools wherein all the children of the State may be educated.

SEC. 2. The legislature shall provide for the establishment and support of institutions for the care and education of the deaf, dumb, and blind of the State.

SEC. 3. Separate schools for white and colored children with like accommodation shall be provided by the legislature and impartially maintained. The term "colored children," as used in this section,

shall be construed to mean children of African descent. The term "white children" shall include all other children.

SEC. 4. The legislature shall provide for the compulsory attendance at some public or other school, unless other means of education are provided, of all the children in the State who are sound in mind and body, between the ages of 8 and 16 years, for at least three months in each year.

SEC. 5. The supervision of instruction in the public schools shall be vested in a board of education, whose powers and duties shall be prescribed by law. The superintendent of public instruction shall be president of the board. Until otherwise provided by law, the governor, secretary of state, and attorney-general shall be ex officio members, and with the superintendent, compose said board of education.

SEC. 6. The legislature shall provide for a uniform system of textbooks for the common schools of the State.

SEC. 7. The legislature shall provide for the teaching of the elements of agriculture, horticulture, stock feeding, and domestic science in the common schools of the State.

ARTICLE XIV.

Banks and banking.

SECTION 1. General laws shall be enacted by the legislature providing for the creation of a banking department, to be under the control of a bank commissioner, who shall be appointed by the governor for a term of four years, by and with the consent of the senate, with sufficient power and authority to regulate and control all State banks, loan, trust and guaranty companies, under laws which shall provide for the protection of depositors and individual stockholders.

SEC. 2. The legal rate of interest shall not exceed 6 per centum per annum in the absence of any contract as to the rate of interest, and, by contract, parties may agree upon any rate not to exceed 10 per centum per annum, and, until reduced by the legislature, said rates of 6 and 10 per centum shall be, respectively, the legal and the maximum contract rates of interest.

SEC. 3. The taking, receiving, reserving, or charging a rate of interest greater than is allowed by the preceding section, when knowingly done, shall be deemed a forfeiture of the entire interest which the note, bill, or other evidence of debt carries with it, or which has been agreed to be paid thereon. In case a greater rate of interest has been paid, the person by whom it has been paid, or his legal representatives, may recover from the person, firm, or corporation taking or receiving the same, in an action in the nature of an action of debt, twice the amount of the interest so paid: *Provided*, Such action shall be brought within two years after the maturity of such usurious contract: *Provided, however*, That this section may be subject to such changes as the legislature may prescribe.

ARTICLE XV.

Oath of office.

SECTION 1. Senators and representatives and all judicial, State, and county officers shall, before entering upon the duties of their respective offices, take and subscribe to the following oath or affirmation:

"I, ———, do solemnly swear (or affirm) that I will support, obey, and defend the Constitution of the United States, and the constitution of the State of Oklahoma, and will discharge the duties of my office with fidelity; that I have not paid, or contributed, either directly or indirectly, any money or other valuable thing, to procure my nomination or election (or appointment), except for necessary and proper expenses expressly authorized by law; that I have not, knowingly, violated any election law of the State, or procured it to be done by others in my behalf; that I will not, knowingly, receive, directly or indirectly, any money or other valuable thing, for the performance or nonperformance of any act or duty pertaining to my office, other than the compensation allowed by law, and I further swear (or affirm) that I will not receive, use, or travel upon any free pass or on free transportation during my term of office."

SEC. 2. The foregoing oath shall be administered by some person authorized to administer oaths, and in the case of State officers and judges of the supreme court, shall be filed in the office of the secretary of state, and in case of other judicial and county officers, in the office of the clerk of the county in which the same is taken; any person refusing to take said oath, or affirmation, shall forfeit his office, and any person who shall have been convicted of having sworn or affirmed falsely, or having violated said oath, or affirmation, shall be guilty of perjury, and shall be disqualified from holding any office of trust or profit within the State. The oath to members of the senate and house of representatives shall be administered in the hall of the house to which the members shall have been elected, by one of the judges of the supreme court, or in case no such judge is present, then by any person authorized to administer oaths.

ARTICLE XVI.

Public roads, highways, and internal improvements.

SECTION 1. The legislature is directed to establish a department of highways, and shall have power to create improvement districts and provide for building and maintaining public roads, and may provide for the utilization of convict and punitive labor thereon.

SEC. 2. The State of Oklahoma hereby accepts all reservations and lands for public highways made under any grant, agreement, treaty, or act of Congress: *Provided*, This section shall not be construed to prejudice the vested rights of any tribe, allottee, or other person to any such land.

LEVEES, DRAINS, AND DITCHES.

SEC. 3. The legislature shall have power and shall provide for a system of levees, drains, and ditches and of irrigation in this State when deemed expedient, and provide for a system of taxation on the lands affected or benefited by such levees, drains, and ditches and irrigation, or on crops produced on such land, to discharge such bonded indebtedness or expenses necessarily incurred in the establishment of such improvements; and to provide for compulsory issuance of bonds by the owners or lessees of the lands benefited or affected by such levees, drains, and ditches or irrigation.

ARTICLE XVII.

Counties.

COUNTY AND TOWNSHIP GOVERNMENT.

SECTION 1. Each county in this State, now or hereafter organized, shall be a body politic and corporate.

SEC. 2. There are hereby created, subject to change by the legislature, in and for each organized county of this State, the offices of judge of the county court, county attorney, clerk of the district court, county clerk, sheriff, county treasurer, register of deeds, county surveyor, superintendent of public instruction, three county commissioners, and such municipal township officers as are now provided for under the laws of the Territory of Oklahoma, except as in this constitution otherwise provided.

SEC. 3. The several counties of the State shall provide, as may be prescribed by law, for those inhabitants who, by reason of age, infirmity, or misfortune, may have claims upon the sympathy and aid of the county.

CREATING OR ALTERING COUNTIES.

SEC. 4. The legislature shall provide by general laws for the creation of new counties or altering or changing lines and the equitable division of assets and of liabilities, and the original location of county seats in such new counties: *Provided*, That every question shall be submitted to the vote of the qualified electors residing in the territory to be formed into such new county or transferred to another county, and shall be approved by 60 per centum of the votes cast in said election: *Provided*, That no new county shall be formed of less than 400 square miles taxable area, nor with a population less than 15,000 people, nor with taxable wealth less than $2,500,000, as shown by the current tax rolls. Nor shall any territory be taken from an existing county for any purpose bringing the newly created line of such existing county nearer than 10 miles to the county seat thereof. Nor shall the taxable area, population, or taxable wealth of said existing county be reduced below that required for a new county. Nor shall any territory, in any case, be transferred from one county to an existing county, if, by such transfer of territory, the county from which the territory be taken will then be smaller in area than the county to which the addition is made: *Provided*, That when territory is to be transferred from an existing county to either a new or an existing county, there must be 60 per centum of the vote cast in such particular territory in favor of the transfer, and, in case the transfer be to an existing county, the acceptance of such territory must first be approved by a majority vote of the electors of said county, at an election to be called and held therefor, as may be provided by law. The limitation as to area, valuation, and population shall not be increased by the legislature.

SEC. 5. When, at any time hereafter, the aggregate value of all taxable property in any one county be a sum total less than $2,500,000, upon petition of one fourth or more of the qualified electors of such county, as shown by the last general election, signed, verified, and

filed with the county commissioners thereof, not less than sixty days before the date of any general election, such county commissioners shall submit, upon the ballot at such next ensuing general election, to the qualified electors of the county, the question: "Shall the county be unorganized county?" "Yes" or "No." If a majority of the votes cast on this question at such election shall be in the affirmative, such county shall thereafter be unorganized and be attached to and be a part of the adjoining county having the lowest valuation of taxable property; and shall so remain as a district in such county until such time as the qualified electors of such unorganized county shall, by similar petition and vote, declare in favor of separate organized county existence: *Provided, however*, That at all times during such unorganized existence such county shall have four terms of county court at the county seat therein each year, and the judge of the county court shall appoint a clerk of the county of said district, from among the qualified electors thereof, who shall keep and maintain his office at such county seat: *Provided further*, That while so unorganized, such county shall, in all respects, be part and parcel of the county with which it is united.

REMOVAL OF COUNTY SEATS.

SEC. 6. The towns herein named as county seats shall be and remain the county seats of their respective counties until changed by vote of the qualified electors of such county, in the following manner:

(*a*) Upon a petition or petitions in writing, signed by 25 per centum of the qualified electors of the county, such per centum to be determined by the total vote cast in such county for the head of the State ticket in the next preceding general election, said petition or petitions being verified by an affidavit showing that the petitioners are qualified electors of said county and such petition or petitions having been filed with the governor at any time after four months after the admission of the State into the Union, the governor shall within thirty days issue his proclamation calling an election to be held in such county not less than sixty nor more than seventy days from the date of his proclamation.

Such election shall be held under the provisions of the election laws of the State, and upon such public notice of such election as the governor in his proclamation may direct; and the governor shall cause to be placed upon the tickets to be voted at such election only the names of such towns as may, more than twenty days prior to such election, file with the governor verified petitions therefor, as above mentioned, signed by not less than 300 qualified electors of said county.

(The word "town," as herein used, shall be construed to mean town, city, or place.)

(*b*) Upon the holding of any such election the board of canvassers shall certify and return said vote to the governor, who shall thereupon at once declare the result and cause the will of the electors to be carried into effect: *Provided*, That in all elections for the removal of any of the county seats named in this constitution the following rules shall govern, until the county seat is once located by a vote of the people, but not later than the 1st day of April, 1909: *Provided further*, In case the necessary and proper petition for the holding of

an election for the removal of a county seat shall be filed with the governor for over six months prior to the 1st day of April, 1909, in accordance with the foregoing provisions, and if such election or elections are delayed or postponed on account of any injunction or legal proceedings then the time limit provided in the subdivision of this section, shall be extended the length of time that such election or elections are delayed or postponed by such injunction or legal proceedings.

If a majority of all the votes cast in the county at such county seat election shall be in favor of any town, such town shall thereafter be the county seat: *Provided, however*, That where the county seat named in this constitution is within 6 miles of the geographical center of the county (said geographical center to be determined by certificate from the secretary of state, and said distance to be determined by measurement from said geographical center to the nearest corporate limits of such county seat, as they existed on the 21st day of January, 1907) it shall require 60 per centum of the total vote cast at such election by the competing town to effect the removal of such county seat, unless such competing town be more than 1 mile nearer the geographical center of said county, in which event a majority vote shall suffice; but, if more than two towns are voted for and no town receive the requisite proportion of all the votes cast, then all names of towns voted for on said ballot, except the two receiving the greatest number of votes, shall be dropped; and the governor shall, in like time and manner, cause to be called and held a second election, at which only two towns which received the greatest number of votes cast at the first election shall be voted for; and the town receiving the requisite proportion of the votes cast at the second election shall be the county seat: *Provided*, That, after the 1st day of April, 1909, all county seats shall be subject to removal under the above-named provisions; but the town to which removal is sought must receive two-thirds of all votes cast in such county at the election held therefor, and such elections shall not occur at intervals of less than ten years: *Provided further*, That until after the 1st day of April, 1909, no public money shall be expended for court-house or jail construction unless a vote of the people of such county shall have been taken on the relocation of the county seat.

SEC. 7. Any person or corporation offering money or other thing of value, either directly or indirectly, for the purpose of influencing any voter for or against any competing town in such election shall be deemed guilty of bribery.

ARTICLE XVIII.

Municipal corporations.

SECTION 1. Municipal corporations shall not be created by special laws, but the legislature, by general laws shall provide for the incorporation and organization of cities and towns and the classification of same in proportion to population, subject to the provisions of this article.

SEC. 2. Every municipal corporation now existing within this State shall continue with all of its present rights and powers until otherwise provided by law, and shall always have the additional rights and powers conferred by this constitution.

CHARTERS.

SEC. 3. (*a*) Any city containing a population of more than 2,000 inhabitants may frame a charter for its own government, consistent with and subject to the constitution and laws of this State, by causing a board of freeholders, composed of two from each ward, who shall be qualified electors of said city, to be elected by the qualified electors of said city, at any general or special election, whose duty it shall be, within ninety days after such election, to prepare and propose a charter for such city, which shall be signed in duplicate by the members of such board or a majority of them, and returned, one copy of said charter to the chief executive officer of such city, and the other to the register of deeds of the county in which said city shall be situated. Such proposed charter shall then be published in one or more newspapers published and of general circulation within said city, for at least twenty-one days, if in a daily paper, or in three consecutive issues, if in a weekly paper, and the first publication shall be made within twenty days after the completion of the charter; and within thirty days, and not earlier than twenty days after such publication, it shall be submitted to the qualified electors of said city at a general or special election, and if a majority of such qualified electors voting thereon shall ratify the same, it shall thereafter be submitted to the governor for his approval, and the governor shall approve the same if it shall not be in conflict with the constitution and laws of this State. Upon such approval it shall become the organic law of such city and supersede any existing charter and all amendments thereof and all ordinances inconsistent with it. A copy of such charter, certified by the chief executive officer, and authenticated by the seal of such city, setting forth the submission of such charter to the electors and its ratification by them shall, after the approval of such charter by the governor, be made in duplicate and deposited, one in the office of the secretary of state, and the other, after being recorded in the office of said register of deeds, shall be deposited in the archives of the city; and thereafter all courts shall take judicial notice of said charter. The charter so ratified may be amended by proposals therefor, submitted by the legislative authority of the city to the qualified electors thereof (or by petition as hereinafter provided) at a general or special election, and ratified by a majority of the qualified electors voting thereon, and approved by the governor as herein provided for the approval of the charter.

SEC. 3. (*b*) An election of such board of freeholders may be called at any time by the legislative authority of any such city, and such election shall be called by the chief executive officer of any such city within ten days after there shall have been filed with him a petition demanding the same, signed by a number of qualified electors residing within such city, equal to 25 per centum of the total number of votes cast at the next preceding general municipal election; and such election shall be held not later than thirty days after the call therefor. At such election a vote shall be taken upon the question of whether or not further proceedings toward adopting a charter shall be had in pursuance to the call, and unless a majority of the qualified electors voting thereon shall vote to proceed further, no further proceeding shall be had, and all proceedings up to that time shall be of no effect.

INITIATIVE AND REFERENDUM.

SEC. 4. (*a*) The powers of the initiative and referendum, reserved by this constitution to the people of the State and the respective counties and districts therein, are hereby reserved to the people of every municipal corporation now existing or which shall hereafter be created within this State, with reference to all legislative authority which it may exercise, and amendments to charters for its own government in accordance with the provisions of this constitution.

SEC. 4. (*b*) Every petition for either the initiative or referendum in the government of a municipal corporation shall be signed by a number of qualified electors residing within the territorial limits of such municipal corporation, equal to 25 per centum of the total number of votes cast at the next preceding election, and every such petition shall be filed with the chief executive officer of such municipal corporation.

SEC. 4. (*c*) When such petition demands the enactment of an ordinance or other legal act other than the grant, extension, or renewal of a franchise, the chief executive officer shall present the same to the legislative body of such corporation at its next meeting, and unless the said petition shall be granted more than thirty days before the next election at which any city officers are to be elected, the chief executive officer shall submit the said ordinance or act so petitioned for to the qualified electors at said election; and if a majority of said electors voting thereon shall vote for the same, it shall thereupon become in full force and effect.

SEC. 4. (*d*) When such petition demands a referendum vote upon any ordinance or any other legal act other than the grant, extension, or renewal of a franchise, the chief executive officer shall submit said ordinance or act to the qualified electors of said corporation at the next succeeding general municipal election, and if, at said election, majority of the electors voting thereon shall not vote for the same, it shall thereupon stand repealed.

SEC. 4. (*e*) When such petition demands an amendment to a charter, the chief executive officer shall submit such amendment to the qualified electors of said municipal corporation at the next election of any officers of said corporation, and if, at said election, a majority of said electors voting thereon shall vote for such amendment, the same shall thereupon become an amendment to and a part of said charter, when approved by the governor and filed in the same manner and form as an original charter is required by the provisions of this article to be approved and filed.

FRANCHISES.

SEC. 5. (*a*) No municipal corporation shall ever grant, extend, or renew a franchise, without the approval of a majority of the qualified electors residing within its corporate limits, who shall vote thereon at a general or special election; and the legislative body of any such corporation may submit any such matter for approval or disapproval to such electors at any general municipal election, or call a special election for such purpose at any time upon thirty days' notice; and no franchise shall be granted, extended, or renewed for a longer term than twenty-five years.

SEC. 5. (*b*) Whenever a petition signed by a number of qualified electors of any municipal corporation equal to 25 per centum of the total number of votes cast at the next preceding general municipal election, demanding that a franchise be granted, extended, or renewed, shall be filed with the chief executive officer of said corporation, the chief executive officer shall, within ten days thereafter, call a special election, at which he shall submit the question of whether or not such franchise shall be granted, extended, or renewed, and if, at said election, a majority of the said electors voting thereon shall vote for the grant, extension, or renewal of such franchise, the same shall be granted by the proper authorities at the next succeeding regular meeting of the legislative body of the city.

SEC. 6. Every municipal corporation within this State shall have the right to engage in any business or enterprise which may be engaged in by a person, firm, or corporation by virtue of a franchise from said corporation.

SEC. 7. No grant, extension, or renewal of any franchise or other use of the streets, alleys, or other public grounds or ways of any municipality, shall divest the State, or any of its subordinate subdivisions, of their control and regulation of such use and enjoyment.

Nor shall the power to regulate the charges for public services be surrendered; and no exclusive franchise shall ever be granted.

ARTICLE XIX.

Insurance.

SECTION 1. No foreign insurance company shall be granted a license or permitted to do business in this State until it shall have complied with the laws of the State, including the deposit of such collateral or indemnity for the protection of its patrons within this State as may be prescribed by law, and shall agree to pay all such taxes and fees as may at any time be imposed by law or act of the legislature, on foreign insurance companies, and a refusal to pay such taxes or fees shall work a forfeiture of such license.

SEC. 2. Until otherwise provided by law, all foreign insurance companies, including surety and bond companies, doing business in the State, except fraternal insurance companies, shall pay to the insurance commissioner for the use of the State, an entrance fee as follows:

Each foreign life insurance company, per annum, $200; each foreign fire insurance company, per annum, $100; each foreign accident and health insurance company, jointly, per annum, $100; each surety and bond company, per annum, $150; each plate glass insurance company (not accident), per annum, $25; each foreign live stock insurance company, per annum, $25.

Until otherwise provided by law, domestic companies excepted, each insurance company, including surety and bond companies, doing business in this State, shall pay an annual tax of 2 per centum on all premiums collected in the State, after all cancellations are deducted, and a tax of $3 on each local agent.

SEC. 3. The revenue and tax provisions of this constitution shall not include, but the State shall provide for, the following classes of

insurance organizations not conducted for profit, and insuring only their own members:

First, farm companies insuring farm property and products thereon; second, trades insurance companies insuring the property and interest of one line of business; third, fraternal life, health, and accident insurance in fraternal and civic orders, and in all of which the interests of the members of each respectively shall be uniform and mutual.

SEC. 4. All fees collected by the insurance commission shall be paid to the State treasurer monthly.

ARTICLE XX.

Manufacture and commerce.

SECTION 1. Nothing herein shall prevent the manufacture or sale of denaturized alcohol under such regulations as may be prescribed by law.

SEC. 2. Until changed by the legislature, the flash test provided for under the laws of Oklahoma Territory for all kerosene oil for illuminating purposes shall be 115° Fahrenheit; and the specific gravity test for all such oil, shall be 40° Baumé.

ARTICLE XXI.

Public institutions.

SECTION 1. Educational, reformatory, and penal institutions and those for the benefit of the insane, blind, deaf, and mute, and such other institutions as the public good may require, shall be established and supported by the State in such manner as may be prescribed by law.

ARTICLE XXII.

Alien and corporate ownership of lands.

SECTION 1. No alien or person who is not a citizen of the United States shall acquire title to or own land in this state, and the legislature shall enact laws whereby all persons not citizens of the United States, and their heirs, who may hereafter acquire real estate in this state by devise, descent, or otherwise, shall dispose of the same within five years upon condition of escheat or forfeiture to the State: *Provided*, This shall not apply to Indians born within the United States, nor to aliens or persons not citizens of the United States who may become bona fide residents of this State: *And provided further*, That this section shall not apply to lands now owned by aliens in this State.

SEC. 2. No corporation shall be created or licensed in this State for the purpose of buying, acquiring, trading, or dealing in real estate other than real estate located in incorporated cities and towns and as additions thereto; nor shall any corporation doing business in this State buy, acquire, trade, or deal in real estate for any purpose except such as may be located in such towns and cities and as additions to such towns and cities, and further except such as shall be necessary and proper for carrying on the business for which it was

chartered or licensed, nor shall any corporation be created or licensed to do business in this State for the purpose of acting as agent in buying and selling land: *Provided, however*, That corporations shall not be precluded from taking mortgages on real estate to secure loans or debts or from acquiring title thereto upon foreclosure of such mortgages or in the collection of debts, conditioned that such corporation or corporations shall not hold such real estate for a longer period that seven years after acquiring such title: *And provided further*, That this section shall not apply to trust companies taking only the naked title to real estate in this State as a trustee, to be held solely as security for indebtedness pursuant to such trust: *And provided further*, That no public-service corporation shall hold any land, or the title thereof, in any way whatever in this State, except as the same shall be necessary for the transaction and operation of its business as such public-service corporation.

ARTICLE XXIII.

Miscellaneous.

LABOR.

SECTION 1. Eight hours shall constitute a day's work in all cases of employment by and on behalf of the State or any county or municipality.

CONVICT LABOR.

SEC. 2. The contracting of convict labor is hereby prohibited.

CHILD LABOR.

SEC. 3. The employment of children, under the age of 15 years, in any occupation, injurious to health or morals or especially hazardous to life or limb, is hereby prohibited.

SEC. 4. Boys under the age of 16 years, and women and girls, shall not be employed, underground, in the operation of mines; and, except in cases of emergency, eight hours shall constitute a day's work underground in all mines of the State.

SEC. 5. The legislature shall pass laws to protect the health and safety of employees in factories, in mines, and on railroads.

CONTRIBUTORY NEGLIGENCE.

SEC. 6. The defense of contributory negligence or of assumption of risk shall, in all cases whatsoever, be a question of fact, and shall, at all times, be left to the jury.

PERSONAL INJURIES.

SEC. 7. The right of action to recover damages for injuries resulting in death shall never be abrogated, and the amount recoverable shall not be subject to any statutory limitation.

WAIVER OF RIGHTS.

SEC. 8. Any provision of a contract, express or implied, made by any person, by which any of the benefits of this constitution is sought to be waived, shall be null and void.

SEC. 9. Any provision of any contract or agreement, express or implied, stipulating for notice or demand other than such as may be provided by law, as a condition precedent to establish any claim, demand, or liability, shall be null and void.

CHANGE IN SALARY, OR EMOLUMENTS.

SEC. 10. Except wherein otherwise provided in this constitution, in no case shall the salary or emoluments of any public official be changed after his election or appointment, or during his term of office, unless by operation of law enacted prior to such election or appointment; nor shall the term of any public official be extended beyond the period for which he was elected or appointed: *Provided*, That all officers within this State shall continue to perform the duties of their offices until their successors shall be duly qualified.

DEFINITION OF RACES.

SEC. 11. Wherever in this constitution and laws of this State, the word or words, "colored" or "colored race," "negro" or "negro race," are used, the same shall be construed to mean or apply to all persons of African descent. The term "white race" shall include all other persons.

ARTICLE XXIV.

Constitutional amendments.

SECTION 1. Any amendment or amendments to this constitution may be proposed in either branch of the legislature, and if the same shall be agreed to by a majority of all the members elected to each of the two houses, such proposed amendment or amendments shall, with the yeas and nays thereon, be entered in their journals and referred by the secretary of state to the people for their approval or rejection, at the next regular general election, except when the legislature, by two-thirds vote of each house, shall order a special election for that purpose. If a majority of all the electors voting at such election shall vote in favor of any amendment thereto, it shall thereby become a part of this constitution.

If two or more amendments are proposed they shall be submitted in such manner that electors may vote for or against them separately.

SEC. 2. No convention shall be called by the legislature to propose alterations, revisions, or amendments to this constitution, or to propose a new constitution, unless the law providing for such convention shall first be approved by the people on a referendum vote at a regular or special election, and any amendments, alterations, revisions, or new constitution, proposed by such convention, shall be submitted to the electors of the State at a general or special election and be approved by a majority of the electors voting thereon, before

the same shall become effective: *Provided*, That the question of such proposed convention shall be submitted to the people at least once in every twenty years.

SEC. 3. This article shall not impair the right of the people to amend this constitution by a vote upon an initiative petition therefor.

Schedule.

In order that no inconvenience may arise by reason of a change from the forms of government now existing in the Indian Territory and in the Territory of Oklahoma, it is hereby declared as follows:

SECTION 1. No existing rights, actions, suits, proceedings, contracts, or claims shall be affected by the change in the forms of government, but all shall continue as if no change in the forms of government had taken place. And all processes which may have been issued previous to the admission of the State into the Union under the authority of the Territory of Oklahoma or under the authority of the laws in force in the Indian Territory shall be as valid as if issued in the name of the State.

SEC. 2. All laws in force in the Territory of Oklahoma at the time of the admission of the State into the Union, which are not repugnant to this constitution, and which are not locally inapplicable, shall be extended to and remain in force in the State of Oklahoma until they expire by their own limitation or are altered or repealed by law.

SEC. 3. All debts, fines, penalties, and forfeitures which have accrued or may hereafter accrue to the Territory of Oklahoma shall inure to the State of Oklahoma, and may be sued for and recovered by the State.

SEC. 4. This constitution shall take effect and be in full force immediately upon the admission of the State into the Union.

SEC. 5. Until otherwise provided by law, notaries public appointed under the laws of the Territory of Oklahoma, or under the authority of the laws heretofore in force in the Indian Territory, may continue to exercise and perform the duties of the office of notary public until the expiration of their commissions: *Provided*, That any notary public appointed in the Indian Territory for any district, or in the Territory of Oklahoma for any county, shall, after this constitution takes effect, exercise the powers, privileges, and rights of a notary public only of the county formed in whole or in part out of the district or county for which such person is a notary public, and in which such person resides at the time the State is admitted into the Union; but before any such notary public, except notaries public for those counties in the Territory of Oklahoma, the boundaries of which have not been changed by the constitution, shall exercise the powers, privileges, and rights of a notary public of such county, he shall have filed in the office of the county clerk of the county in which he resides his commission as notary public and an affidavit stating that he is a resident of such county, whereupon he shall become a notary public for such county.

SEC. 6. The appointments of female persons as notaries public, heretofore made by the Governor of Oklahoma, and by the United States courts for the Indian Territory, and by the judges of said courts, are hereby confirmed and made valid, and all official acts of such notaries public heretofore performed are hereby validated, in

so far as the acts of such notaries public may be affected by any ineligibility of such persons to appointment as notaries public. Female persons possessing the other qualifications prescribed by law shall be eligible to the office of notary public and of county superintendent of public inseruction.

SEC. 7. All property, real and personal, credits, claims, and choses in action, belonging to the Territory of Oklahoma at the time the State is admitted into the Union, shall be vested in and become the property of the State of Oklahoma.

SEC. 8. All judgments and records of deeds, mortgages, liens, and other instruments, filed or recorded, affecting the title to real and personal property in the Indian Territory and Osage Indian Reservation, are hereby made as effectual to impart notice and for all other purposes under the laws of the Territory of Oklahoma extended in force in the State, as they were under the laws heretofore in force in the Indian Territory and Osage Indian Reservation.

SEC. 9. All judgments and records of deeds, mortgages, liens, and other instruments, filed or recorded, affecting title to real and personal property in new counties that have been created out of the territory of any county or counties of the Territory of Oklahoma, or out of the territory of any county or counties of the Territory of Oklahoma and of any recording district or districts of the Indian Territory, are hereby made as effectual to impart notice and for all other purposes under the laws of the Territory of Oklahoma, extended in force in the State, as the same would have been if no changes had been made by the provisions of this constitution in the boundaries of the counties as they existed in the Territory of Oklahoma, or of the boundaries of the recording districts as they existed in the Indian Territory.

SEC. 10. Until otherwise provided by law, incorporated cities and towns, heretofore incorporated under the laws in force in the Territory of Oklahoma or in the Indian Territory, shall continue their corporate existence under the laws extended in force in the State, and all officers of such municipal corporations at the time of the admission of the State into the Union shall perform the duties of their respective offices under the laws extended in force in the State, until their successors are elected and qualified in the manner that is or may be provided by law: *Provided*, That all valid ordinances now in force in such incorporated cities and towns shall continue in force until altered, amended, or repealed.

SEC. 11. All taxes assessed or due to incorporated cities and towns in the Indian Territory, and all taxes levied by such incorporated cities and towns for the year 1907 shall, until otherwise provided by law, be levied and collected in the same manner as now provided by law in force in the Indian Territory, and under the laws and ordinances now in force in such municipal corporations.

SEC. 12. In all incorporated cities and towns in the Indian Territory, all local improvements or public buildings in process of being made or constructed under the laws in force in the Indian Territory, or for which proceedings having been commenced under such laws at the time of the admission of the State into the Union, shall be completed under said laws, and said laws are hereby extended in force as to such improvements or public buildings until such local

improvements or public buildings are completed and paid for, as by such laws provided.

SEC. 13. The act of Congress entitled "An act for the protection of the lives of miners in the Territories," approved March 3, 1891, and the act of Congress entitled "An act to amend an act entitled 'An act for the protection of the lives of miners in the Territories,'" approved July 1, 1902, are hereby extended to and over the State of Oklahoma until otherwise provided by law: *Provided*, That the words, governor of the State are hereby substituted for the words, "governor of such organized territory," and for the words "Secretary of Interior," wherever the same appear in said acts, and the words, chief mine inspector, for the words, "mine inspector," wherever the same appear in said acts. The chief mine inspector shall also perform the duties required by laws of the Territory of Oklahoma of the territorial oil inspector until otherwise provided by law.

SEC. 14. Until otherwise provided by law, all dental surgeons licensed to practice in the Territory of Oklahoma and all dental surgeons who were residents of the Indian Territory on the 16th day of June, 1906, and also all graduates of some reputable school or college of dental surgery, shall be eligible and be licensed to practice in the State without examination.

SEC. 15. Until otherwise provided by law, the officers of the State shall receive annually as compensation for their services, the following sums:

The governor, $4,500; lieutenant-governor, $1,000; secretary of state, $2,500; attorney-general, $4,000; state treasurer, $3,000; state auditor, $2,500; state examiner and inspector, $3,000; chief mine inspector, $3,000; labor commissioner, $2,000; commissioner of charities and corrections, $1,500; corporation commissioners, $4,000 each; superintendent of public instruction, $2,500; the insurance commissioner, $2,500.

SEC. 16. The salary of the justices of the supreme court of the State shall be $4,000 per annum each, and that of the judges of the district court, $3,000 per annum each, until changed by the legislature.

SEC. 17. The members of the board of agriculture, bank commissioner, clerk of the supreme court, and all other State officers, except as herein provided, or such as may be created, and all clerks and assistants, shall receive such compensation for their services as may be provided by law.

SEC. 18. Until otherwise provided by law, the terms, duties, powers, qualifications, and salary and compensation of all county and township officers, not otherwise provided by this constitution, shall be as now provided by the laws of the Territory of Oklahoma for like named officers, and the duties and compensation of the probate judge under such laws shall devolve upon and belong to the judge of the county court: *Provided*, That the term of office of those elected at the time of the adoption of this constitution, or first appointed under the provisions of the laws extended in force in the State, shall expire on the second Monday of January in the year 1911: *And provided further*, That county attorneys and judges of the county court of the several counties of the State, having a population of more than 20,000 shall be paid a salary of $2,000 per annum; and of counties having a population of more than 30,000, a salary of $2,500 per annum; and

of counties having a population of more than 40,000, a salary of $3,000 per annum; such salaries to be paid in the same manner as is provided by law in force in the Territory of Oklahoma for the payment of salaries to county attorneys.

SEC. 19. Until otherwise provided by law, the boards of regents of the University of Oklahoma, of the Agricultural and Mechanical College, of the Normal schools now established, of the University Preparatory School, and of the Colored Agricultural and Normal and University, shall continue to hold their offices and exercise the functions thereof until their successors are elected or appointed and qualified.

SEC. 20. The legislature shall provide by general, special, or local law for the equitable division of the property, assets, and liabilities of any county existing in the Territory of Oklahoma between such county and any new county or counties created in whole or in part out of the territory of such county.

SEC. 21. All property, real and personal, and credits, claims, and choses in action, belonging to the county of Day at the time of the admission of the State into the Union, shall be vested in and become the property of the county of Ellis: *Provided*, The legislature shall provide, by general, special, or local law, for the equitable division of the assets of Day County, thus transferred to Ellis County, and of the liabilities of Day County, between the counties of Roger Mills and Ellis.

SEC. 22. The clerk of the supreme court shall procure a seal and cause such inscription to be placed thereon as may be prescribed by the supreme court. Each clerk of the district court shall procure a seal, and, under the direction of the judge of the district court, cause to be inscribed thereon the style of his office and the name of his county. Each county clerk, county treasurer, register of deeds, county surveyor, and county superintendent of public instruction, shall procure a seal, and, under the direction of the county judge, cause to be inscribed thereon the style of his office and the name of his county. Said seal shall be sufficient and used for all lawful purposes until otherwise provided by law: *Provided*, That, until any of such officers shall have procured a seal, the signature of any such officer shall be sufficient for all purposes without a seal.

SEC. 23. When this constitution shall go into effect, the books, records, papers, and proceedings of the probate court in each county, and all causes and matters of administration and guardianship, and other matters pending therein, shall be transferred to the county court of such county, except of Day County, which shall be transferred to the county court of Ellis County, and the county courts of the respective counties shall proceed to final decree or judgment, order, or other termination in the said several matters and causes as the said probate court might have done if this constitution had not been adopted. The district court of any county, the successor of the United States court for the Indian Territory, in each of the counties formed in whole or in part in the Indian Territory, shall transfer to the county court of such county all matters, proceedings, records, books, papers, and documents appertaining to all causes or proceedings relating to estates: *Provided*, That the legislature may provide for the transfer of any of said matters and causes to another county than herein prescribed.

SEC. 24. Until otherwise provided by law, the seal of the probate courts in the counties of the Territory of Oklahoma shall be the seal of the county courts, and in that part of the State heretofore comprising the Indian Territory and Osage Indian Reservation, and in the new counties created in the Territory of Oklahoma, until the county court shall have procured a proper seal, the signature of the county judge shall be sufficient for all purposes without a seal.

SEC. 25. Any county, city, incorporated town, township, board of education, school district, or other municipality, either in the Territory of Oklahoma or the Indian Territory, that shall owe, at the time of the admission of the State into the Union, any indebtedness, evidenced by warrants, scrip, or other evidence of indebtedness, is authorized, through the proper officers thereof, to make provision for the payment of, and to pay, such indebtedness, either by tax levy or by issuing bonds in lieu thereof, in accordance with and under the provision of the laws extended in force in the State: *Provided*, That the limitation upon the amount of indebtedness that may be created by any county, city, incorporated town, township, board of education, school district, or other municipality, and upon the amount of taxes that may be levied by any county, city, incorporated town, township, board of education, school district, or other municipality, under the provisions of this constitution, or of law, shall not apply to the indebtedness, the levying of taxes, and the issuing of bonds provided for herein.

SEC. 26. All cases, civil and criminal, pending, upon the admission of the State into the Union, in the supreme court of the Territory of Oklahoma, on appeal or writ of error from the district or probate courts of any county or subdivision within the limits of the State, and the papers, records, proceedings, and seal of said court shall be transferred to the supreme court of the State, except as is otherwise provided in the enabling act of Congress. And all cases, civil and criminal, pending, on the admission of the State into the Union, in the United States court of appeals for the Indian Territory, and the papers, records, and proceedings of said court, shall be transferred to the supreme court of the State, except as is otherwise provided by the enabling act of Congress and the amendments thereto.

SEC. 27. All cases, civil and criminal, pending, at the time of the admission of the State into the Union, in the district courts of the Territory of Oklahoma, in any county within the district, and the records, papers, and proceedings of said district court, and the seal and other property appertaining thereto, shall be transferred into the district court of the State for such county, except as is provided in the enabling act of Congress, and all cases, civil and criminal, pending, at the time of the admission of the State into the Union, in the United States court for the Indian Territory, within the limits of any county created in whole or in part within the limits of what was heretofore the Indian Territory, and all records, papers, and proceedings of said United States courts for the Indian Territory, and the seal and other property appertaining thereto, shall be transferred to the district court of the State for such county, except as is provided in the enabling act of Congress and the amendments thereto: *Provided*, That the legislature may provide for the transfer of any such cases from one county to another county.

SEC. 28. The terms and provisions of an act of Congress, entitled "An act to amend sections 16, 17 and 20, of an act entitled 'An act to

enable the people of Oklahoma and Indian Territory to form a constitution and State government and be admitted into the Union on an equal footing with the original States, and to enable the people of New Mexico and Arizona to form a constitution and State government and be admitted into the Union on an equal footing with the original States,'" are hereby accepted, and the jurisdiction of the cases enumerated therein is hereby assumed by the courts of the State.

SEC. 29. Any person who shall be a qualified elector of any county of a judicial district at the time of the election held to ratify this constitution, and who shall, in all other respects, be eligible under the provisions of the constitution, to be elected judge of the district court of such district, shall be eligible to be elected judge of the district court of such district at the first election held for the election of State officers.

SEC. 30. Any person who shall have been a resident of the territory within the limits of the State for a period of one year next preceding the date on which the election for the ratification of the constitution is held, and who shall otherwise be eligible, under the provisions of this constitution, to be elected to any State office, shall be eligible to be elected to any such State office at the first election held for the election of State officers.

SEC. 31. The assessment of property in the Osage Indian Reservation for the year 1907, by the authorities of Pawnee County, shall be the assessment of Osage County for the year 1907, and the proper authorities of Pawnee County shall levy a tax on the property of the Osage Indian Reservation for the year 1907, as now provided by law, and immediately upon the admission of the State into the Union, the county treasurer of Pawnee County shall turn over to the county treasurer of Osage County the tax books and records of taxes in the Osage Indian Reservation, so made for the year 1907, and the treasurer of Osage County shall proceed and have the authority to receive all such taxes in the Osage Indian Reservation for the year 1907, and such taxes shall be collected and enforced in the manner provided by law. And there shall also be collected, in addition to the tax so levied by the authorities of Pawnee County, a county school tax of 10 mills on the dollar of the assessed valuation, and the same shall be and become the property of said Osage County: *Provided*, That, out of the funds so collected, the county treasurer of Osage County shall pay to the county treasurer of Pawnee County the cost and expenses of making such assessment and the levying of such taxes.

SEC. 32. The legislature shall provide by general, special, or local law for the equitable division of the property, assets, and liabilities of any school district existing in the Territory of Oklahoma between such school district and any new school district created in whole or in part of the territory of any such school district, as may be affected by a change in the county boundaries under this constitution.

SEC. 33. All attorneys at law licensed to practice in any court of record of the Territory of Oklahoma, or in any of the United States courts for the Indian Territory, or any court of record of any of the Five Civilized Tribes, shall be eligible to practice in any court of the State without examination.

SEC. 34. Until otherwise provided by law, any newspaper, published at the time of the admission of the State into the Union, in any

new county, created in whole or in part out of the territory of any county of Oklahoma Territory, or in any county, created in whole or in part, out of territory within the limits of the Indian Territory or Osage Indian Reservation, shall, under the laws extended in force in the State, be considered, in law, to have been published continuously for fifty-two weeks in said county and shall be a newspaper entitled to publish all legal notices, advertisements, or publications of any kind required or provided by any law of the State.

SEC. 35. All debts and indebtedness, authorized to be incurred by the constitutional convention of the proposed State of Oklahoma, and all expenses of holding the election for the ratification or rejection of this constitution and for the election of officers of a full state government, which shall remain unpaid after the appropriation made by the Congress of the United States has been exhausted, are hereby assumed by the State; and it is hereby made the duty of the legislature, at its first session, to provide for the payment of same: *Provided*, That the debts and indebtedness, the payment of which is hereby assumed by the State, shall not include any debt or expense as a salary or compensation of the delegates of the constitutional convention.

SEC. 36. The ordinance adopted by the constitutional convention, entitled, " An ordinance, providing for an election, at which the proposed constitution for the proposed State of Oklahoma shall be submitted to the people thereof for ratification or rejection, and submitting separately to the people of the proposed State of Oklahoma the proposed prohibition article, making substantially the terms of the enabling act uniformly applicable to the entire State, for ratification or rejection, and for the election of certain State, district, county, and township officers provided for by said proposed constitution, and for the election of members of the legislature of said proposed State of Oklahoma and for five Representatives to Congress," is hereby ratified and shall be valid for all the purposes thereof.

SEC. 37. Nothing in this constitution contained shall legalize or make valid any illegal or invalid indebtedness of any county, city, incorporated town, township, board of education, school district, or other municipality, either in the Territory of Oklahoma or the Indian Territory, or impair any defense against the payment of the same.

SEC. 38. Should the first session of the legislature, provided by this constitution, fail to provide for the division of the property, assets, and liabilities of any county existing in the Territory of Oklahoma between such county and any county or counties created in whole or in part out of such county, original jurisdiction is hereby conferred upon the supreme court to make equitable division of such property, assets, and liabilities, and for the purpose of hearing and receiving evidence and reporting findings of law and fact may appoint a special master in chancery in any such case.

SEC. 39. The qualifications prescribed by the laws of Oklahoma shall not apply to superintendents of public instruction, elected at the time of the ratification of this constitution, in the Indian Territory and Osage Indian Reservation.

SEC. 40. The terms of all officers of the State government elected at the time of the adoption of this constitution shall begin upon the admission of the State into the Union.

SEC. 41. All persons elected at the time of the adoption of this constitution to any of the offices provided under the constitution shall be deemed to have duly qualified upon their taking the oath of office

before any officer authorized by law to administer oaths, and executing such bond as may be required by law.

SEC. 42. All officers elected at the time of the adoption of the constitution shall execute such official bond as may then be required by law or thereafter required by act of the legislature; and such bonds shall inure to the benefit of the State or other beneficiary, for whose protection or security the same shall be required.

SEC. 43. When this constitution shall have been ratified by the people of the State of Oklahoma and the State admitted into the Federal Union, under the same, as engrossed on parchment and signed by the officers and members of this constitutional convention, it shall be filed in he office of the secretary of state and sacredly preserved by him, as the fundamental law of the State of Oklahoma.

Done in open convention at the city of Guthrie, in the Territory of Oklahoma, on this, the 16th day of July, in the year of our Lord 1907, and the Independence of the United States of America one hundred and thirty-first.

Attest:

JOHN MCLAIN YOUNG,
Secretary.

CHAS. H. FILSON,
Secretary of Oklahoma.

[SEAL.]

WM. H. MURRAY,
President of the Constitutional Convention of the proposed State of Oklahoma and Delegate from District No. 104.

PETE HANRATY,
Vice-President.

ALBERT H. ELLIS,
Second Vice-President and Delegate 14, District.

PHILIP B. HOPKINS,
District No. 75.

C. N. HASKELL,
District No. 76.

C. S. Leeper, 96; T. O. James, district No. 1; C. H. Pittman; J. H. N. Cobb; C. W. Board, 73; W. S. Dearing, district 44; David S. Rose, district 15; Geo. A. Henshaw, district 107; W. F. Hendricks, district 10; James H. Chambers, district 105; William J. Caudill, district 50; Cham Jones, district 101; John M. Carr, district No. 54; L. B. Littleton, district No. 32; J. B. Tosh, district 52; J. K. Hill, district 63; J. J. Savage, district 48; J. S. Buchanan, district 34; J. C. Graham, district 106; J. A. Alderson, district 12; Thad D. Rice, district 38; A. G. Cochran, district 98; William N. Littlejohn, district 78; James R. Copeland, district 62; C. V. Rogers, district 64; B. E. Bryant, district 47; Samuel W. Hayes, district 85; James I. Wood, district 89; David Hogg, district 43; Flowers Nelson, district 68; Boone Williams, district 97; W. L. Helton, district 24; Edward R. Williams, district 3; J. F. King, district No. 16; J. W. Swarts, district 60; W. E. Banks, district 51; R. J. Allen, district 93; Charles M. McClain, district No.

86; Fred C. Tracy, district No. 2; G. M. Berry, district No. 18; William C. Liedtke, district 83; J. A. Baker, district 81; T. C. Wyatt, district 33; Charles L. Moore, district No. 13; A. L. Hausam, district 70; J. J. Quarles, district No. 56; Ben. F. Harrison, district 88; E. G. Newell, district 19; Hamner G. Turner, district No. 80; Delphas G. Harned, district 9; J. Howard Langley, district 65; G. W. Wood, district No. 8; J. S. Latimer, district 99; Jno. B. Harrison, 45; Joel M. Sandlin, district 22; L. J. Akers, district 102; John L. Mitch, district 29; W. A. Ledbetter, district 103; Christopher C. Mathis, district 100; Edwin T. Sorrells, district 92; Carlton Weaver, district 87; Henry S. Johnston, district 17; J. E. Sater, district No. 20; Milas Lasater, district 94; S. W. Ramsey, district 30; R. L. Williams, district No. 108; Henry L. Cloud, district 23; E. F. Messenger, district No. 82; John J. Carney, district 36; Gabe E. Parker, district 109; W. C. Hughes, district 28; H. O. Tener, district 42; C. H. Bower, district 41; J. K. Norton, district 35; Matthew J. Kane, district 37; Joseph J. Curl, 57; O. H. P. Brewer, 77; A. S. Wyly, district 72; William H. Edley, district 53; George Norton Bilby, district 6; T. J. Leahy, district 56.

TERRITORY OF OKLAHOMA, *Logan County:*

I, Wm. H. Murray, president of the constitutional convention of the proposed State of Oklahoma, do hereby certify that the within and foregoing is the original parchment enrollment of the constitution and the several articles thereof adopted by the constitutional convention of the proposed State of Oklahoma, to be submitted to the people of the proposed State of Oklahoma for ratification, and that all the interlineations therein contained and all the erasures and words stricken out were made and done before the same was signed by the president, the vice-presidents, and the members of said convention.

Witness my hand this the 16th day of July, A. D. 1907.

WM. H. MURRAY,

President of the Constitutional Convention of the proposed State of Oklahoma.

Resolutions adopting the Constitution of the United States.

Whereas, the enabling act provides that a declaration be made by the delegates to this convention adopting the Constitution of the United States: Therefore, be it resolved by the organized convention, that the delegates elected to the constitutional convention for the proposed State of Oklahoma, assembled in Guthrie, the seat of government of said Oklahoma Territory, do declare on behalf of the people of said proposed state, that they adopt the Constitution of the United States.

I hereby certify that the above and foregoing resolution was duly passed by the convention upon its organization, on the 21st day of November, A. D. 1906.

I hereby certify that the above and foregoing is a true, correct, and literal copy of the constitution for the proposed State of Oklahoma, as the same is engrossed on parchment, and signed by the officers and members of the constitutional convention and as certified to by Chas. H. Filson as secretary of the Territory of Oklahoma, under the seal of said Territory.

Given under our official signatures this 7th day of May, A. D. 1907.

WM. H. MURRAY,
President, the Constitutional Convention of the proposed State of Oklahoma.

Attest:

JOHN MCLAIN YOUNG,
Secretary.

Accepting enabling act.

Be it ordained by the constitutional convention for the proposed State of Oklahoma, that said constitutional convention do, by this ordinance, irrevocable, accept the terms and conditions of an act of the Congress of the United States, entitled, "An act to enable the people of Oklahoma and the Indian Territory to form a constitution and State government and be admitted into the Union on an equal footing with the original States; and to enable the people of New Mexico and of Arizona to form a constitution and State government and be admitted into the Union on an equal footing with the original States," approved June the 16th, anno Domini 1906.

I hereby certify that the foregoing ordinance accepting the terms and conditions of the enabling act as the same has heretofore been passed and engrossed, was engrossed with the engrossed copy of the constitution on parchment, was read as engrossed and roll call had thereon and the same duly adopted by a majority of the votes of all the delegates elected to and constituting this convention, at 11.41 o'clock, a. m., this 22nd day of April, anno Domini 1907.

WM. H. MURRAY,
President The Constitutional Convention of the proposed State of Oklahoma.

Attest:

JOHN MCLAIN YOUNG,
Secretary.

Prohibition.

ARTICLE SUBMITTING THE SAME SEPARATELY TO A VOTE OF THE PEOPLE.

The manufacture, sale, barter, giving away, or otherwise furnishing, except as hereinafter provided, of intoxicating liquors within this State, or any part thereof, is prohibited for a period of twenty-one years from the date of the admission of this State into the Union, and thereafter until the people of the State shall otherwise provide by amendment of this constitution and proper State legislation. Any

person, individual or corporate, who shall manufacture, sell, barter, give away, or otherwise furnish any intoxicating liquor of any kind, including beer, ale, and wine, contrary to the provisions of this section, or who shall, within this State, advertise for sale or solicit the purchase of any such liquors, or who shall ship or in any way convey such liquors from one place within this State to another place therein, except the conveyance of a lawful purchase as herein authorized, shall be punished, on conviction thereof, by fine not less than $50 and by imprisonment not less than thirty days for each offense: *Provided*, That the legislature may provide by law for one agency under the supervision of the State in each incorporated town of not less than 2,000 population in the State; and if there be no corporated town of 2,000 population in any county in this State, such county shall be entitled to have one such agency, for the sale of such liquor fors medicinal purposes; and for the sale, for industrial purposes, of alcohol which shall have been denaturized by some process approved by the United States Commissioner of Internal Revenue; and for the sale of alcohol for scientific purposes to such scientific institutions, universities, and colleges as are authorized to procure the same free of tax under the laws of the United States; and for the sale of such liquors to any apothecary who shall have executed an approved bond, in a sum not less than $1,000, conditioned that none of such liquors shall be used or disposed of for any purpose other than in the compounding of prescriptions or other medicines, the sale of which would not subject him to the payment of the special tax required of liquor dealers by the United States, and the payment of such special tax by any person within the State shall constitute prima facie evidence of his intention to violate the provisions of this section. No sale shall be made except upon the sworn statement of the applicant in writing setting forth the purpose for which the liquor is to be used, and no sale shall be made for medicinal purposes except sales to apothecaries as hereinabove provided unless such statement shall be accompanied by a bona fide prescription signed by a regular practicing physician, which prescription shall not be filled more than once. Each sale shall be duly registered, and the register thereof, together with the affidavits and prescription pertaining thereof, shall be open to inspection by any officer or citizen of the State at all times during business hours. Any person who shall knowingly make a false affidavit for the purpose aforesaid shall be deemed guilty of perjury. Any physician who shall prescribe any such liquor, except for treatment of disease which after his own personal diagnosis, he shall for each offense by fine of not less than $200 or by imprisonment for not less than thirty days, or by both such fine and imprisonment; and any person connected with any such agency who shall be convicted of making any sale or other disposition of liquor contrary to these provisions shall be punished by imprisonment for not less than one year and one day. Upon the admission of this State into the Union these provisions shall be immediately enforceable in the courts of the State: *Provided*, That there shall be submitted separately, at the same election at which this constitution is submitted for ratification or rejection, and on the same ballot, the foregoing article —, entitled "Prohibition," on which ballot shall be printed for State-wide prohibition and against State-wide prohibition: *And provided*

further, That if a majority of the votes cast for and against State-wide prohibition are for State-wide prohibition, the said article — shall be and form a part of this constitution and be in full force and effect as such, as provided therein; but if a majority of said votes shall be against State-wide prohibition, then the provisions of said article shall not form a part of this constitution and shall be null and void.

I hereby certify that the above and foregoing provision and ordinance submitting the same separately to a vote of the people of the State as heretofore adopted on the 11th day of March, A. D. 1907, as above engrossed, was adopted as engrossed upon roll call for the pupose of such separate submission, on this the 22nd day of April, anno Domini 1907.

WM. H. MURRAY,
President The Constitutional Convention of the proposed State of Oklahoma.

Attest:

JOHN MCLAIN YOUNG,
Secretary.

O

60TH CONGRESS, 1st Session | SENATE | DOCUMENT No. 200

SPECIAL REPORT OF

WM. H. TAFT

Secretary of War

TO THE PRESIDENT

ON THE PHILIPPINES

JANUARY 27, 1908

Referred to the Committee on the Philippines and ordered to be printed

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SPECIAL REPORT OF THE SECRETARY OF WAR.

WAR DEPARTMENT,
Washington, D. C., January 23, 1908.

Mr. PRESIDENT:

By your direction I have just visited the Philippine Islands. I sailed from Seattle September 13, last; reached Manila October 15; remained in the Islands until November 9, when I returned to the United States via Trans-Siberian Railway, reaching New York December 20. The occasion for my visit was the opening of the Philippine Assembly. The members of the Assembly were elected in July last, in accordance with the organic act of Congress, by the eligible voters of the Christian provinces of the Islands, divided into 80 districts. The Assembly becomes a branch of the legislature of the Islands coordinate with the Philippine Commission. This makes a decided change in the amount of real power which the Philippine electorate is to exercise in the control of the Islands. If justified by substantial improvement in the political conditions in the Islands, it is a monument of progress.

It is more than nine years since the battle of Manila Bay and the subsequent surrender of Manila by the Spaniards to the American forces. It is more than eight years since the exchange of ratifications of the treaty of Paris, by which the Philippine Islands passed under the sovereignty and became the property of the United States. It is more than seven years since President McKinley, by written instructions to Mr. Root, Secretary of War, committed the government of the Philippine Islands to the central control of the Philippine Commission, subject to the supervision of the Secretary of War. It is more than six years since the complete installation of a quasi civil government in the Islands, with a civil governor as executive and the Commission as a legislature, all by authority of the President as Commander in Chief of the Army and Navy. It is more than five years since the steps taken by President McKinley and yourself in establishing and maintaining a quasi civil government in the Islands were completely ratified and confirmed by the Congress in an organic act which, in effect, continued the existing government, but gave it needed powers as a really civil government that the President under constitutional limitations was unable to confer. The installation of the Assembly seems to be, therefore, an appropriate time for a precise statement of the national policy toward the people of the Philippines adopted by Mr. McKinley, continued by you, and confirmed by Congress, for an historical summary of the conditions political, social, and material, existing in the Islands when the United States became responsible for their government, and for a

review of the results of governmental measures taken to improve the conditions of law and order, the political and intellectual capacity of the people, and their sanitary and material welfare.

The policy of the United States toward the Philippines is, of course, ultimately for Congress to determine, and it is difficult to see how one Congress could bind another Congress, should the second conclude to change the policy declared by the first. But we may properly assume that after one Congress has announced a policy upon the faith of which a whole people has for some years acted and counted, good conscience would restrain subsequent Congresses from lightly changing it. For four years Congress in silence permitted Mr. McKinley and yourself, as Commanders in Chief of the Army, to adopt and carry out a policy in the Philippines, and then expressly ratified everything which you had done, and confirmed and made part of the statute certain instructions which Mr. McKinley issued for the guidance of the Philippine Commission in making civil government in the Islands. Not only this, but Congress closely followed, in the so-called organic act, your recommendations as to provisions for a future change in the Philippine government. The national policy may, therefore, be found in the course pursued and declarations made by the Chief Executives in Congressional messages and other state papers which have met the approval of Congress.

Shortly stated, the national policy is to govern the Philippine Islands for the benefit and welfare and uplifting of the people of the Islands and gradually to extend to them, as they shall show themselves fit to exercise it, a greater and greater measure of popular self-government. One of the corollaries to this proposition is that the United States in its government of the Islands will use every effort to increase the capacity of the Filipinos to exercise political power, both by general education of the densely ignorant masses and by actual practice, in partial self-government, of those whose political capacity is such that practice can benefit it without too great injury to the efficiency of government. What should be emphasized in the statement of our national policy is that we wish to prepare the Filipinos for *popular* self-government. This is plain from Mr. McKinley's letter of instructions and all of his utterances. It was not at all within his purpose or that of the Congress which made his letter part of the law of the land that we were merely to await the organization of a Philippine oligarchy or aristocracy competent to administer government and then turn the Islands over to it. On the contrary, it is plain, from all of Mr. McKinley's utterances and your own, in interpretation of our national purpose, that we are the trustees and guardians of the whole Filipino people, and peculiarly of the ignorant masses, and that our trust is not discharged until those masses are given education sufficient to know their civil rights and maintain

them against a more powerful class and safely to exercise the political franchise. This is important, in view of the claim, to which I shall hereafter refer, made by certain Filipino advocates of immediate independence under the auspices of the Boston anti-imperialists, that a satisfactory independent Philippine government could be established under a governing class of 10 per cent and a serving and obedient class of 90 per cent.

Another logical deduction from the main proposition is that when the Filipino people as a whole, show themselves reasonably fit to conduct a popular self-government, maintaining law and order and offering equal protection of the laws and civil rights to rich and poor, and desire complete independence of the United States, they shall be given it. The standard set, of course, is not that of perfection or such a governmental capacity as that of an Anglo-Saxon people, but it certainly ought to be one of such popular political capacity that complete independence in its exercise will result in progress rather than retrogression to chaos or tyranny. It should be noted, too, that the tribunal to decide whether the proper political capacity exists to justify independence is Congress and not the Philippine electorate. Aspiration for independence may well be one of the elements in the make-up of a people to show their capacity for it, but there are other qualifications quite as indispensable. The judgment of a people as to their own political capacity is not an unerring guide.

The national Philippine policy contemplates a gradual extension of popular control, *i. e.*, by steps. This was the plan indicated in Mr. McKinley's instructions. This was the method indicated in your recommendation that a popular assembly be made part of the legislature. This was evidently the view of Congress in adopting your recommendation, for the title of the act is "For the temporary government of the Philippine Islands" and is significant of a purpose or policy that the government then being established was not in permanent form, but that changes in it from time to time would be necessary.

In the historical summary of conditions in the Islands when the United States assumed responsibility for their government and the review of measures adopted by the present Philippine government to improve conditions and the results, it will be convenient to consider the whole subject under the following heads:

1. The conditions as to law and order. The way in which they have been restored and are now permanently maintained.

2. The political capacity and intellectual development of the Filipinos under Spain and the steps taken by the Philippine government for their general and political education.

3. Conditions of health under Spain. The sanitary measures under the Philippine government.

4. The material and business conditions. Progress made under present government.
5. The future of the Philippines.
6. The cost of the Philippine government to the United States.

THE CONDITIONS AS TO LAW AND ORDER—THEIR RESTORATION AND PERMANENT MAINTENANCE.

In 1896 occurred the first real insurrection against the Government of Spain in the Philippine Islands. The idea of a more liberal government than that which Spain gave the Islands had taken root in 1871 with the opening of the Suez Canal, the flocking of Spaniards to Manila, and the spread of republican doctrines that had had a short triumph in the mother country about that time. In the measures of repression which were adopted from time to time by Spanish governors-general the aid of Spanish parish priests was thought by the people to be actively enlisted in ferreting out those suspected of sedition and too liberal political views. The priests were largely from the four religious orders—the Dominicans, the Augustinians, the Franciscans, and the Recoletos. There was a considerable body of native priests also, but they were of the secular clergy, held the less desirable posts, and were hostile to the Spanish friars. Three of the religious orders held large bodies of rich agricultural lands situate, much of it, in Cavite, Laguna, Manila, Morong, Bataan, and Bulacan, all thickly populated provinces close to Manila. Their tenants numbered sixty or seventy thousand persons. The insurrection of 1896 was not only against the Spanish Government to secure a more liberal régime, but it was also for the elimination of the friars as a controlling political element in the community. It was largely confined to Cavite, Laguna, Manila, and Bulacan, where lay the large friars' estates. It had an agrarian aspect. There was much fighting, and the losses on both sides were very heavy, especially in the province of Cavite. Ultimately the drastic measures of the Spaniards drove Aguinaldo and the forces which he led out of Cavite into Bulacan and led to what was known as the treaty of Biac-na-Bató. This was an arrangement by which many of the insurrecto chiefs, including Aguinaldo, agreed, in consideration of the payment of a large sum of money, to end the insurrection and withdraw from the Islands. The money was to be paid in three installments. The first payment was made, and many of the chiefs, including Aguinaldo, withdrew from the Islands and went to Hongkong. There was much dispute as to what the agreement was, and it was strenuously insisted by each side that the other failed to comply with its stipulations. It is not material now to consider this mooted question. Suffice it to say that in 1898, when Admiral Dewey attacked the Spanish fleet in Manila Bay, the embers of dissatisfaction on the part of the former Filipino insurgents with the Spanish

Government were still aglow, and it was not difficult for Aguinaldo to raise a force of insurrectos to aid the Americans in surrounding Manila and in driving Spain from the Islands.

Between 1896 and 1898 the conditions which had been brought on by the first insurrection continued, and trade was much interrupted, agriculture did not flourish, and conditions as to the maintenance of order were by no means favorable. As an index to this, it may be said that the managers of the friars' estates collected no rents from the tenants after 1896. The battle of Manila Bay and the defeat of the Spanish fleet destroyed the prestige of Spain throughout the Islands and created insurrection in nearly every province. The refusal of General Merritt to permit Aguinaldo's troops to enter Manila created a resentment on the part of the Filipino soldiers, and the relations between the Americans and the Filipinos soon became strained. The situation was not relieved at all by the signing of the treaty at Paris, transferring the sovereignty of the islands to the Americans. Meantime, as the Americans were confined to the occupation of Manila, Aguinaldo and his military assistants attempted the organization of a government throughout the islands. A so-called constitutional convention was held at Malolos and a constitution was adopted. At the same time the Visayan republic was organized, to embrace the Visayan Islands, under certain Visayan leaders. It professed allegiance to Aguinaldo's government. Neither Aguinaldo's government nor the Visayan government was able to maintain order, and the whole country was subject to the looting of predatory bands, and chaos reigned. Where the Aguinaldo government had authority, it was exercised with military severity and with much local oppression and corruption. On the 4th of February, 1899, there was an attack by the Filipino forces surrounding Manila upon the American troops, which was successfully resisted. Later on, upon the 23d of February, there was an outbreak in Manila itself, and an attempt to burn the city, which was suppressed by the American troops with a heavy hand.

On the 11th of April the treaty ceding the Philippine Islands to the United States was ratified and ratifications exchanged. From that time until the spring of 1900 a campaign was carried on by the American forces against the regularly organized troops under Aguinaldo. Aguinaldo's forces were defeated and scattered, and then in 1900 there succeeded a guerrilla warfare in nearly every province in the Islands, which was continued with more or less vigor until July, 1902. The guerrilla warfare was carried on only because of the encouragement received by the insurrectos from speeches of the so-called "anti-imperialists" and the assurances publicly given by political leaders in the United States of immediate severance of the

relations between the Islands and the United States in case the Administration were defeated in the election. At times the warfare would seem to cease and the insurrection seem to be at an end, and then it would revive again, apparently with a view to influencing elections in America.

It can readily be inferred from this statement that from the breaking out of the insurrection in 1896, with the new insurrection in 1898, and the war with the Americans beginning early in 1899 until the close of the guerrilla warfare in June, 1902, the conditions of the country were not peaceable and agriculture could not flourish. Not only did the existence of actual war prevent farming, but the spirit of laziness and restlessness brought on by a guerrilla life affected the willingness of the native to work in the fields. More than this, the natural hatred for the Americans which a war vigorously conducted by American soldiers was likely to create did not make the coming of real peace easy.

But in addition to these disturbed conditions, due directly to war, there are certain features of Philippine civilization always present, war or no war, that do not tend to permanent tranquillity and can not be ignored.

In the first place the Philippines have been infested with ladrones, or robber bands, since their earliest history. The Spanish Government maintained a large force, called "la guardia civil," to suppress the evil. In some provinces, blackmail was regularly paid by large landowners to insure themselves against the loss incident to attack and destruction of their property. In the province of Cavite, for instance, ladronism was constant, and it was understood that the managers of the friars' estates, which amounted in all in that province to 125,000 acres, usually paid blackmail to ladrones in the form of money or provisions. The province of Cavite was known as "the mother of ladrones," and there was certainly a sympathy between the lower classes and the ladrones who mulcted the landlords.

But besides the ladrone habit, which makes for continued disorder, there is another quality of the ignorant masses of the Philippine people that is a constant danger to tranquillity. More than 80 per cent of the Philippine people are illiterate. Their ignorance is dense. They speak some 15 or 16 different Malay dialects. Knowledge of one dialect does not give an understanding of another. Each dialect has a limited vocabulary, which offers no medium of communication with modern thought or civilization. Their ignorance makes them suspicious of all educated persons but those of their own race who know their dialect and are well to do.

The result is that in rural communities in the Philippines whole townships of people are completely subject to the will of any educated,

active-minded person living in that community, who knows the local dialect and is willing or able to arouse either the fears or cupidity of his neighbors into the organization of a band either to resist fancied dangers or oppression, to satisfy vengeance, or to achieve a living and comfort without labor. This is the central and most important fact in the make-up of the local Philippine communities. It has led to the abuse of caciquism, i. e., local bossism, to which I shall refer in the question of the organization of municipalities and provincial governments. The history of the insurrection and of the condition of lawlessness which succeeded the insurrection is full of instances in which simple-minded country folk at the bidding of the local leader, or cacique, have committed the most horrible crimes of torture and murder, and when arrested and charged with it have merely pleaded that they were ordered to commit the crime by the great man of the community. This irresponsible power possessed by local leaders over their ignorant neighbors, in case of an independent Filipino government lacking the moral strength which the United States Government derives from its power and resources and its determination to punish disturbance and maintain order, would, under present conditions, lead, after a short period, to a chaos of ever-recurring revolt and insurrection to satisfy the vengeance of disappointed bosses and local leaders.

Whenever Filipino municipal officials come into contact either with non-Christian tribes or with inferior peoples of their own race like those who live in the mountains of Samar and Leyte, known as "pulahanes," they are likely to exercise official authority for their own profit and to the detriment of the inferior people. Thus in Samar and Leyte the mountain people raise a good deal of hemp. The municipal authorities of the lowlands and the local caciques conspire to prevent the disposition of this hemp to anyone but their own agents at an unjustly low price, using duress and a show of official authority for the purpose. This fraud and mistreatment ultimately creates among the mountain peoples a just sense of indignation. Then it is that some religious fakir invites them to organize against their enemies, under the charm of some religious token, and some lowland village is sacked and its people are murdered. The central and provincial authorities intervene and a war ensues, which lays waste much of the interior of the islands, to suppress a disorder that had its inception in a just cause of complaint.

Of course the frequency of such disturbances is reduced as education spreads, as the poor and oppressed begin to understand their rights and the lawful method of asserting them, and as the real cause of such outbreaks are more clearly understood and suppressed. But no account of the difficulty of maintaining peace and order in the

Philippines would be accurate or just which did not make clear this possible recurring cause of trouble and disturbance under present conditions, due to the ease with which simple-minded, ignorant people of a community can be aroused, by one or more of the better educated of their own race viciously inclined, to deeds of murder and cruel violence. Such disturbances are generally heralded as the evidence of seething sedition and discontent with the American Government, whereas they are generally but the effect and symptom of mere local abuses entirely Filipino in origin.

Having thus described the conditions of disorder, actual and potential, in the Philippines, due not only to the four or five years of intermittent and recurring war, the rancor and race hatred it tended to create, the unfounded hopes held out by American anti-imperialists, and all the other sequelæ of war, but also to certain normal features and qualities of the present Philippine civilization, I come to review the measures taken and policy adopted by the American Government to bring the Islands to their present state of complete tranquillity.

THE WORK OF THE UNITED STATES ARMY.

The agency of the Army in bringing about order in the Islands must never be minimized. The hardships of the campaign which it had to carry on were very great. The responsibility which was thrown upon captains, lieutenants, and sergeants in command of small detachments into which it was necessary to divide the Army to meet the exigencies of guerrilla warfare was met with courage and intelligence and great fertility of resource under most trying and unusual conditions. It is not too much to say that no other army of the same size could have accomplished the results which were accomplished by the American Army. At times there were some members of this Army who were tempted, in the eagerness of pursuit, into indefensible and cruel practices for the obtaining of information—practices which had been common among the Spaniards and the Filipinos themselves. Revelations of these cruelties led to severe indiscriminate criticism and attacks on the Army as a whole which were calculated to discourage and dishearten, but in spite of all difficulties the work went on. At one time in the campaign against guerrilla warfare there were more than 500 different posts and more than 65,000 men in arms. Certain it is that order would have never been restored without the efficient and courageous service rendered by the Army, and in spite of all the stories that were told of the cruelties inflicted by the Americans upon Filipinos, only a small part of which were true, any candid observer of the conditions at the time must admit that the American soldiers as a body exhibited toward the Filipinos a self-restraint and a sympathy with the benevolent

purposes of the administration which the circumstances and the character of the Filipino warfare carried on were not calculated to invite.

Not only did the Army do most efficient work in the suppression of the insurrection when war was rife, but the presence of 12,000 American soldiers in the Islands since has been a moral force of great weight to secure peaceful conditions. Occasionally they have been called on for active work in subduing disorders in particular provinces which had gone beyond the control of the local and insular peace officers and they have rendered prompt and effective service in such cases. They are now being concentrated in larger and larger posts for economical, educational, and disciplinary purposes, but their presence anywhere in the Islands is beneficial to the cause of order. They are now popular with the Filipinos, and we find the same objection to abandonment of posts by neighboring Filipino communities that we meet in the United States.

PROMISE OF EXTENSION OF SELF-GOVERNMENT.

President McKinley announced as his policy that the Philippine Islands would be taken over by the American Government to be governed for the benefit of the Filipinos, and that as they developed fitness for partial self-government it should be gradually extended to them. In order to enforce and give evidence of this purpose, he appointed a Commission in 1899, known from its chairman, Hon. J. G. Schurman, as the "Schurman Commission," to visit the Philippine Islands and extend local self-government as rapidly as possible. The Commission was able only to investigate conditions and to report that in its judgment the Filipinos were not fit for self-government. It was able to be present at the organization of municipal government in a few towns which had been captured by the Americans, but it practically was able to do no constructive work, in view of the conditions of war that existed while it was there. It returned to the United States and made its report.

In February of 1900 a new Commission was appointed by President McKinley, who gave it much more ample powers than its predecessor, for the purpose of organizing civil government in the wake of war as rapidly as conditions would permit. The powers conferred were set forth in a letter of instructions delivered by President McKinley to Mr. Root, Secretary of War, for his guidance and that of the Commission in respect of the policy to be pursued in the Philippines. The Commission arrived in June, 1900. The Commission was not authorized to assume any authority until the 1st of September and spent its time from June until September, 1900, in making investigations. It then took over the power and duty of enacting legislation to make a government for that part of the Islands

in which war had ceased to exist and to make appropriations from funds raised by taxation for civil purposes. The preparation and enactment of a municipal and a provincial code for the organization and maintenance of municipalties and provinces in the Islands occupied much of the attention of the Commission during the remainder of the year 1900.

For the three or four months prior to the Presidential election in November, 1900, it was impossible to proceed with the actual organization of civil government. The insurgents were assured that the Administration of Mr. McKinley would be defeated and that his defeat would be immediately followed by a separation of the Islands from the United States. Everything hung on the election. The reelection of Mr. McKinley was a great blow to the insurrectos.

ORGANIZATION OF THE FEDERAL PARTY.

It is a mistake to suppose that the war by the Filipinos against the Americans had the sympathy of all the Filipinos. On the contrary, there were many intelligent and conservative men who favored American control and who did not believe in the capacity of their people immediately to organize a government which would be stable and satisfactory, but in the face of a possible independence of the Islands, they were still. Upon Mr. McKinley's second election many of these persons reached the conclusion that it was time for them to act. Accordingly, they formed the Federal Party, the chief platform of which was peace under American sovereignty and the acceptance of the American promises to govern the Islands for the benefit of the Filipinos and gradually to extend popular self-government to the people. The Federal Party received accessions by thousands in all parts of the Islands and in every province, so that the Commission was enabled during the year 1901, and under the auspices, and with the aid of, the Federal Party, to organize civil government in some 32 or 33 provinces, or in substantially all of them. The proof of the purposes of the American Government, given in the popular features of the provincial and municipal codes, which bore out in every respect the general promises of President McKinley, had much to do with the ending of the war. From November 1, 1900, until July 1, 1901, when military government was declared to be ended and a civil governor appointed, the men and guns surrendered exceeded that of any similar period in the history of the war.

THE CENTRAL GOVERNMENT.

The somewhat anomalous creation of the Philippine Commission, as a civil legislature in a purely military government established by the President by virtue of his powers as Commander in Chief, presented

some difficult questions of jurisdiction between the military governor and the Commission and led to considerable friction. The Commission, however, held the purse strings, and as is usual in such cases the control of appropriations ultimately left the powers of the Commission substantial and undisputed. Another difficulty arose in respect to jurisdiction of the courts established and appointed by the Commissioners to issue writs of habeas corpus to inquire into the legality of the detention of civilians by the general commanding. This, too, subsequently was worked out in favor of the civil courts. The differences between the military and civil authorities did not escape the attention of the Philippine public, and of course the sympathy of the Filipinos went with the civil side of the controversy, and the appointment of a civil governor July 1, 1901, and the clothing him with extensive authority had the popular approval. This was increased by the appointment to the Commission of three Filipino members. They were the most prominent members of the Federal Party. The Commission now consisted of the civil governor, four other Americans, and three Filipinos. The four American members, in addition to their legislative work, were made respectively the heads of four departments—one of finance and justice, the second of the interior, the third of commerce and police, and the fourth of public instruction. To these departments were assigned the appropriate bureaus by which the business of the central government was directly carried on. The presence of the Filipinos in the controlling body of the government offered an excellent opportunity for Filipino influence to affect legislation and brought to the new quasi civil government a sympathetic support from the Filipino public that included most of those but recently in arms against American sovereignty.

In some provinces civil government proved to have been prematurely established, notably in Batangas, Cavite, Cebu, and Samar, and in the fall of 1901 the services of the Army were again required in those provinces. But ultimately they became peaceful. The guerrilla forces which continued in arms were finally subjugated or brought in through the vigor of the Army and the influence of the Federal party, before July 1, 1902, when peace was officially declared to exist by your proclamation of amnesty.

EFFECT ON PERMANENT ORDER OF MUNICIPAL AND PROVINCIAL GOVERNMENTS AND NATIONAL ASSEMBLY.

Under the head of political education I shall describe the initiation and maintenance of municipal and provincial governments in some detail, and shall consider them and the assembly as instruments in

the political education of the Filipinos and comment on their efficiency and defects as government agencies. I now wish to refer to them as part of the so-called policy of "attraction." The Filipino people did not expect the liberal and popular provisions of the municipal and provincial codes, and their enactment created the revulsion of feeling that enabled the Federal party to bring on peace. The part the people were given in governing both towns and provinces stimulated them to efforts in behalf of order that became greatly more sympathetic and effective, when, as I hereafter point out, the officers of the insular constabulary learned their real function of assistance and not independent command. The giving control of the provincial board to two elected officials added to their sense of responsibility as to order in the province and was convincing of the sincerity of American promise to extend popular control by gradual steps.

The provisions of the organic act passed by Congress in July, 1902, confirming President McKinley's policy and the promise of an assembly if good order was maintained, had a great effect to make the Filipino people anxious to preserve order, and no act of the American Executive was more convincing to the people of the good faith of the Administration than your proclamation of the elections at a time when an excuse for delay within the law might easily have been found in some of the disturbances then existing. The existence and influence of the assembly are important continuing factors in the maintenance of law and order.

ESTABLISHMENT OF COURTS.

Even under the purely military administration before the appointment of the Commission a military governor had established civil courts for the purpose of disposing of civil cases and for such violations of law as were not more conveniently disposed of by military tribunals. The Commission early passed a law dividing the Islands into some 15 districts, establishing a court of first instance in each district, together with a supreme court of seven to consider appeals from the courts of first instance. This system was recognized and adopted by Congress in the organic act of July 1, 1902. The policy was pursued of appointing a Filipino, the first lawyer of the Islands, the chief justice of the supreme court, together with two Filipino colleagues and four Americans. About the same proportion between Americans and Filipinos was observed in the appointment of judges of the court of first instance.

There was great difficulty in finding proper material for the American judges because there were so few American lawyers in the United

States who spoke Spanish, and it greatly interfered with the convenience of hearings if the judge did not know Spanish. However, time cured this difficulty, because the American appointees rapidly acquired a knowledge of the Spanish language sufficient to take testimony and hear arguments without interpreters. The first years of the courts, especially in the country, were almost entirely occupied in hearing criminal cases. The civil government very soon adopted the position that after a state of peace had been declared in 1902, men in arms engaged in looting and robbery should be treated not as insurrectos or as enemies under the laws of war, but merely as violators of the local law. In the early days of the insurrection if a body of insurrectos was organized in any province and was captured, their guns were taken and after a short imprisonment the men were released. This practice had led to a feeling on the part of the ignorant people that they might with impunity resort to arms, and if caught thereafter that they would be imprisoned for a short time only and then released. The imposition of long sentences, fifteen or twenty years, and the confinement of men in Bilibid prison and the requirement that they should work at hard labor was a most effective method of teaching the ignorant and easily led members of a community the difference between a political revolution and the crime of robbery and living on one's neighbors by force.

A great number of persons in various provinces were prosecuted for banditiism. A statute was passed to cover these cases providing that a man might be convicted of a felony by conclusive proof that he was a member of a band organized to commit robberies, even though no evidence was adduced to show any particular robbery in which he was personally concerned. This has been hailed as a departure from the usages of the common law and the spirit of our institutions. It is nothing of the kind. It is merely the denunciation of a particular kind of conspiracy. It was entirely impracticable to identify the perpetrators of particular robberies, but it was entirely practicable to prove conclusively the existence of a band to commit the robberies, and the membership of the particular defendant in that band, although his presence at the commission of an overt act it was often impossible to show. There is not the slightest reason in law or morals why a man thus proved to be a robber should not be punished and punished just as severely as the men who were actually taken in the commission of the act. The effect of this law was to bring to justice a great number of criminals in various provinces, and its vigorous administration by both the Filipino and American judges under active prosecution by Filipino prosecutors did much toward the suppression of ladronism. The difficulty was that the number of convicted persons became so large as to strain the capacity of the jails and penitentiaries in the Islands. This congested condition has been met, however, now, first,

by the establishment of a penal colony in the island of Palawan, and, second, by the use of prisoners in several provinces for the construction of roads.

After many of those sentenced for highway robbery had served two years the governor-general appointed a commission to go over the cases to recommend for pardon those persons who, while guilty of the crime charged were not of the criminal class, but had been led into it by duress and undue influence of neighboring brigand chiefs and caciques. Quite a large number of these persons were paroled and sent back to their homes to give them an opportunity to become good citizens. The changing condition of the country and the maintenance of law and order are evidenced by the fact that the proportion of civil cases to criminal cases in the courts of first instance and the supreme court is rapidly increasing. It is becoming much easier to dispose of the criminal cases, while it is the civil cases that now clog the dockets. The standard in the administration of justice in the Islands is high. It has been sometimes charged by irresponsible persons that some of the judges were subject to executive influence. An investigation into the matter discloses not the slightest evidence of the existence of any such evil, and the whole charge rests on the easily spread rumor of disappointed litigants or political enemies of the government. On the whole, I am quite sure that throughout the Islands the judges of the courts, and especially the members of the supreme court, have the entire confidence of the public in the justice and sincerity of their conclusions. No distinction has been made in the hearing of causes by a Filipino or American judge, and the system moves on quietly and effectively to accomplish the purpose for which it was adopted. The influence of the courts in the restoration of order has been very important.

THE PHILIPPINE CONSTABULARY.

Another step most necessary and useful in the restoration of order was the organization of a body of upward of 5,000 men, Filipinos officered by Americans, into a constabulary divided into companies and organized by Regular Army officers. But little difficulty was found in the organization of this body as an efficient fighting and scouting force, but it took several years of training, of elimination, and of severe discipline before the subordinate officers, those assigned to each province, were made to understand the proper policy to be pursued by them in respect to the native governors and presidentes of the municipalities who had been elected by the people under the municipal and provincial codes. At first there was constant friction and suspicion between them, and this did not aid at all the work of suppressing ladrones and other disreputable and vicious elements of the community. Year by year, however, improvement has

been made in this regard, and the lesson has been taught that the constabulary are not a military force, but a force of police organized by the central government and paid out of its treasury to assist in a sympathetic way the native local officers in the work of suppression of disorder and lawlessness of their particular localities. When I was in the Islands two years ago the native papers were full of condemnation of the constabulary and its severity. During the last two years a most remarkable change has taken place in the relations between the officers and men of this force and the provincial governors and officers of the towns, and now there is nothing more popular in the Islands than the constabulary.

FRIARS' LANDS.

A most potential source of disorder in the Islands was the ownership of what were called the "friars' lands" by three of the religious orders of the Islands—the Dominicans, the Augustinians, and the so-called bare-footed Augustinians, known as "Recoletos." These lands amounted in all to 425,000 acres, of which 275,000 were in the immediate neighborhood of Manila, 25,000 in Cebu, and 125,000 in the remote provinces of Isabela and Mindoro. The tenants on those which were close to Manila numbered some sixty or seventy thousand persons. The attitude of the people toward the friars' lands was shown by the fact that the so-called constitutional convention assembled by Aguinaldo at Malolos nationalized the friars' lands—that is, appropriated them to the so-called "Republic of the Philippines." With the restoration of order and the establishment of courts the representatives of these religious bodies were entitled to go into court and recover from tenants the rents which had been in arrears since 1896, and to eject them from the lands which they had occupied unless they admitted title and continued to pay rent. The occupants of the friars' lands resolutely refused to do either, and the Philippine government was confronted with the immediate prospect of suits to evict 60,000 tenants in those provinces prone to disturbances and insurrection.

The situation was further strained by the fact that the church, for lack of other competent priests, showed every inclination to send back to the parishes from which they had been driven as many of the friars who had been parish priests as it could. Every parish to which a friar priest returned at once began to seethe with popular indignation, and threats of violence were constantly made toward him. The only solution possible, consistent with the preservation of vested property rights on the one hand, and the right secured by treaty to the friars of freedom of religion and freedom of speech in any part of the islands, was some arrangement by which the

land could be taken over by the Government and the church induced not to send friars as parish priests to those parishes where riot and disturbance were likely to follow. A visit to Rome for consultation with the head of the Roman Catholic Church resulted in the Pope's sending an apostolic delegate to the Islands with adequate powers and in subsequent negotiations which ultimately led to the purchase of the lands for seven millions of dollars and induced a practice on the part of the hierarchy of the church by which they send no friars as parish priests into any parish in which the governor-general makes final objection.

The price paid for the lands was a good round sum. It had to be in order to secure them. Congress, convinced of the necessity for their acquisition, had provided, in the organic act for the establishment of a government in the Philippines, either for their purchase or in the alternative for their condemnation by the Government and their subsequent disposition on long, easy terms to the occupants. The representatives of the Dominican order objected to the condemnation of their lands and employed able counsel to test the validity of the provision for condemnation for such a purpose. The point made was a serious one and increased the importance of securing the lands by purchase, if possible. With the government as a landlord the tenants manifest no disposition to contest its title, save in a few isolated cases. I shall not stop now to discuss the present value of the lands or their management. I shall refer to that later. It is enough for my present purpose to point out that the acquisition of these lands by the government and the adjustment of differences as to the use of friars as parish priests have removed a fruitful source of disturbance in the provinces of Cavite, Laguna, Manila, Bataan, Morong, and Cebu.

By another compromise, to which I shall refer in detail later, a controversy between the government and the Roman Catholic Church as to charitable and educational trusts and in respect to the Spanish-Filipino Bank has been settled. At one time this controversy promised to contribute to the disorder of the Islands.

There are no other questions between the government and the Roman Catholic Church, unless it can be said that questions of possession and title to church property arising from the Aglipayan schism can be said to involve them.

Immediately after our negotiations with Leo XIII at Rome were found not to include an absolute agreement to withdraw the friars from the Islands, Aglipay, a former Catholic priest under excommunication, organized a schism from the Roman church. He called his church the Independent Filipino Catholic Church. At first the schism spread far and wide through the Islands, and as the number of priests of the Roman Catholic Church by reason of the expulsion

of the friars had been reduced so that many churches lay open and idle, the priests of the Aglipayan schism, with the acquiescence of the townspeople in the various villages where the Aglipayans were in the majority, assumed possession of land and church buildings which had been occupied in Spanish days by the Roman Catholic Church. Possession was taken under a claim that the churches belonged to the people of the municipality and that they were able to dispose of the use of the churches to such religious purposes as they saw fit. This course of procedure led to innumerable controversies and to frequent breaches of the peace and to a bitterness of feeling that did not make either for the tranquillity of the Islands or their prosperity.

The Executive consistently and properly declined to decide the question of title or the right to possession which arose in each case after peaceable possession had been taken. This was regarded as unreasonable by the authorities of the Roman Catholic Church, but was the only possible course which the civil executive could take without arrogating to itself judicial powers. Instead of attempting to decide these questions the Commission passed a law providing for their early settlement by suits brought originally in the supreme court. One set of these cases has been decided in favor of the Roman Catholic Church and others are now nearly ready for decision, so that we may reasonably expect that within six months the whole matter may be disposed of, and when this is done the religious obstacles that seemed so formidable when the Philippine government was assumed by the United States will have been disposed of permanently and that fruitful source of disturbance and riot and discontent will have ceased.

I have given in detail the steps taken to restore and maintain order in the Islands. I have mentioned the vigorous campaign of the Army and the moral restraint of its presence in the Islands, the promises of President McKinley as to gradual extension of self-government, the organization of the Federal party, the institution of municipal and provincial governments on a popular plan, the confirmation of President McKinley's policy by the act of Congress establishing a Philippine government, assuring a national assembly, and your fulfillment of the assurance, the establishment of courts with partly American and partly Filipino judges, the punishment of predatory bands as civil felons, the establishment and growth of the insular constabulary as a sympathetic aid to Filipino municipal and provincial officials in suppressing lawlessness, and, finally, the removal by satisfactory compromises of the irritating church questions which had much to do with causing the original insurrection and, if unsettled, were pregnant with disorder.

PRESENT CONDITION.

Peace prevails throughout the Islands to-day in a greater degree than ever in the history of the Islands, either under Spanish or American rule, and agriculture is nowhere now impeded by the fear on the part of the farmer of the incursion of predatory bands. Under the policy already stated, inaugurated by the instructions of President McKinley to Secretary Root, in reference to the establishment of a temporary government in the Philippines, a community consisting of 7,000,000 people, inhabiting 300 different islands, many of whom were in open rebellion against the Government of the United States for four years, with all the disturbances following from robber and predatory bands which broke out from time to time, due to local causes, has been brought to a state of profound peace and tranquillity in which the people as a whole are loyally supporting the government in the maintenance of order. This is the first and possibly the most important accomplishment of the United States in the Philippines.

THE POLITICAL CAPACITY AND INTELLECTUAL DEVELOPMENT OF THE FILIPINOS UNDER SPAIN AND THE STEPS TAKEN BY THE PHILIPPINE GOVERNMENT FOR THEIR GENERAL AND POLITICAL EDUCATION.

Very little practical political education was given by the Spaniards to the Filipinos. Substantially all the important executive offices in the Islands were assigned to Spaniards, and the whole government was bureaucratic. The provincial and municipal authorities were appointed and popular elections were unknown. The administration of the municipalities was largely under the supervision and direction of the Spanish priest of the parish. No responsibility for government, however local or unimportant, was thrust upon Filipinos in such a way as to give them political experience, nor were the examples of fidelity to public interest sufficiently numerous in the officeholders to create a proper standard of public duty. The greatest difficulty that we have had to contend with in vesting Filipinos with official power in municipalities is to instill in them the idea that an office is not solely for private emolument.

There was an educated class among the Filipinos under the Spanish régime. The University of St. Thomas, founded by the Dominican Order early in the seventeenth century, has furnished an academic education to many graduates. The same order, as well as the Jesuits and the Augustinians, maintained secondary and primary schools for the well-to-do. Quite a number of Filipinos were educated in Spain or France. As compared with the youth and young men of school

and college age in the Islands, the number, however, was very small. These men were educated either as lawyers, physicians, pharmacists, or priests. In politics their knowledge was wholly theoretical. They imbibed liberal ideas from the spread of republican doctrines in Spain, and the repressive policy of the Spanish Government, of course, operated only to encourage them. They were patriotic, and soon conceived of the Philippines as a nation. Rizal, a leader of Philippine thought, a poet, and a political writer, did not favor independence, for he believed his people not yet fitted, but he sought reform in the Spanish government of the Philippines and some popular voice in it.

As the protest against Spanish domination grew, the aspiration for complete independence took possession of many, and in the insurrections which followed there were many patriots moved by as high ideals as those which have led to revolutions in any country. Their conceptions of liberty, of independence, of government were wholly ideal, however. When in the course of events they came to actual government they were unable to realize their conceptions, and only a one-man power or an oligarchy with class privilege, and no real civil rights for the so-called serving or obedient class, followed. They needed as much education in practical civil liberty as their more ignorant fellow-countrymen in reading, writing, and arithmetic.

The efforts of the American Government to teach the ignorant their civil rights and to uplift them to self-governing capacity finds only a languid sympathy from many of the "ilustrados." From them comes the only objection to teaching English to the common people, lest they lose their national character; as if it were necessary to keep the people confined to 16 barbarous dialects in order that they should be distinctly Filipino. The real motive for the objection, whether conscious or not, is in the desire of the upper class to maintain the relation of the ruling class to the serving and obedient class.

The educated Filipino has an attractive personality. His mind is quick, his sense of humor fine, his artistic sense acute and active; he has a poetic imagination; he is courteous in the highest degree; he is brave; he is generous; his mind has been given by his education a touch of the scholastic logicism; he is a musician; he is oratorical by nature.

The educated Filipino is an aristocrat by Spanish association. He prefers that his children should not be educated at the public schools, and this accounts for the large private schools which the religious orders and at least one Filipino association are able to maintain. In arguing that the Philippines are entirely fit for self-government now, a committee of educated Filipinos once filed with the civil gov-

ernor a written brief in which it was set forth that the number of "ilustrados" in the Islands was double that of the offices—central, provincial, and municipal—and therefore the country afforded two "shifts" of persons competent to run the government. This, it was said, made clear the possibility of a good government if independence was granted. The ignorance of the remainder of the people, admitted to be dense, made no difference. I cite this to show of how little importance an intelligent public opinion or an educated constituency is regarded in the community and government which many of the educated Filipinos look forward to as a result of independence. I do not say that there are not notable exceptions to this among leading Filipinos, but such persons are usually found among those who are not so impatient to lose American guidance in the government. Indeed, I am gratified to hear that the first bill which passed the Assembly was an appropriation of a million pesos for barrio schools. On the whole, however, there is reason for believing that were the government of the Islands now turned over to the class which likes to call itself the natural ruling class, the movement initiated by the present government to educate the ignorant classes would ultimately lose its force. The candor with which some of the representatives of the independista movement have spoken of the advantage for governmental purposes of having 80 per cent of the people in a serving or obedient class indicates this.

No one denies that 80 per cent of the Filipino people are densely ignorant. They are in a state of Christian tutelage. They are childlike and simple, with no language but a local Malay dialect spoken in a few provinces; they are separate from the world's progress. The whole tendency under the Spaniards was to keep them ignorant and innocent. The Spanish public school system was chiefly on paper. They were for a long time subject completely to the control of the Spanish friar, who was parish priest and who generally did not encourage the learning of Spanish or great acquantance with the world at large. The world owes to the Spanish friar the Christianization of the Filipino race. It is the only Malay or oriental race that is Christian. The friars beat back the wave of Mohammedanism and spread their religion through all the Islands. They taught the people the arts of agriculture, but they believed it best to keep them in a state of innocent ignorance. They did not encourage the coming into the Filipino local communities of Spaniards. They feared the influence of world knowledge. They controlled the people and preached to them in their own dialects. They lived and died among them.

The friars left the people a Christian people—that is, a people with Western ideals. They looked toward Rome, and Europe, and America.

They were not like the Mohammedan or the Buddhist, who despise Western civilization as inferior. They were in a state of tutelage, ripe to receive modern Western conceptions as they should be educated to understand them. This is the reason why I believe that the whole Christian Filipino people are capable by training and experience of becoming a self-governing people. But for the present they are ignorant and in the condition of children. So, when the revulsion from the Spanish domination came, as it did, the native priest or the neighboring "ilustrado" or "cacique" led them into the insurrection. They are a brave people and make good soldiers if properly led. They learn easily, and the most striking fact in our whole experience in the Philippines is the eagerness with which the common Filipino agricultural laborer sends his children to school to learn English.

There is no real difference between the educated and ignorant Filipinos that can not be overcome by the education of one generation. They are a capable people in the sense that they can be given a normal intellectual development by the same kind of education that is given in our own common school system. Now they have not intelligence enough to exercise the political franchise with safety to themselves or their country; but I do not see why a common school education in English, with industrial teaching added, may not make the children of these people capable of forming an intelligent public opinion needed to sustain a popular government if, at the same time that the oncoming generations are being educated in schools, primary and industrial, those who are intelligent are being given a political education by actually exercising the power of the franchise and actually taking part in the government.

As will be seen hereafter, the Philippine government has not funds enough to educate in primary and industrial schools all the present generation of school age, and unless some other source of funds than governmental revenues is found it will take longer than a generation to complete the primary and industrial education of the common people. Until that is done, we ought not to lift our guiding hand from the helm of the ship of state of the Philippine Islands. With these general remarks as to the present unfitness of the Filipino people for popular self-government and their capacity for future development so that they may, by proper education, general and political, become a self-governing people, I come to the methods pursued by the Philippine government in furnishing to the Filipinos the necessary education. I shall consider the subject under two heads:

1. Education in schools for the youth of school age.
2. Practical political education by the extension, step by step, of political control to an eligible class.

FIRST: EDUCATION IN SCHOOLS.

Reference has already been made to the fact of the very great ignorance and illiteracy that prevails among the Filipino people. It is not too much to say that knowledge of Spanish is a fairly good indication whether an individual can be said to be educated. Statistics show that but 7 per cent of the people of the Islands speak Spanish; all the others speak in the varying dialects, which among the civilized people number some 16. The Philippine people should be educated sufficiently to have a common medium of communication, and every man, woman, and child should have the benefit of the primary education in that common medium. Reading, writing, and arithmetic are necessary to enable the rural laborer and the small hemp, cocoanut, or tobacco farmer to make contracts for the sale of his products and to know what price he should receive for that which he has to sell. With this knowledge, too, he will soon be able to know his own rights and to resist the absolute control which is now frequently exercised over him by the local cacique.

The necessity for a common school system was emphasized in the instructions of President McKinley to Secretary Root, and those responsible for the government of the Islands have been earnest and active in seeking to establish one. The language selected for the schools is English. It is selected because it is the language of business in the Orient, because it is the language of free institutions, and because it is the language which the Filipino children who do not know Spanish are able more easily to learn than they are to learn Spanish, and it is the language of the present sovereign of the Islands. The education in English began with the soldiers of the American Army, one of whom was detailed from each company to teach schools in the villages which had become peaceful. When the Commission assumed authority it sent to the United States for 1,000 American teachers, and after the arrival of these pioneers in the Islands, a system of primary schools was inaugurated together with normal schools.

Public educational work in the Islands is performed under the bureau of education, with the central office located in Manila, having 37 divisions, each in charge of a division superintendent, embracing in all 379 school districts each in charge of a supervising teacher. The total number of schools in operation during the past year was: Primary schools, 3,435; intermediate schools, 162; arts and trades schools, 32; agricultural schools, 5; domestic-science schools, 17, and provincial high schools, 36, making a total of 3,687 and an increase from the previous year as follows: 327 primary schools, 70 intermediate schools, 15 arts and trades schools, 3 agricultural schools, and

9 domestic-science schools. There are engaged in the teaching of these schools at present 717 permanent American teachers and 109 temporary appointees, and all of these are paid out of the central treasury. In addition to these there are what are known as Filipino insular teachers, numbering 455, who are paid out of the central treasury. In addition to these there are 5,656 municipal Filipino teachers, all of whom speak and teach English and who are paid out of the treasuries of the municipalities.

The 6,000 Filipino teachers who are now teaching English have received their English education from our normal schools or our American teachers. Their number is growing, and they represent and are the most valuable educational asset we have acquired in working out our school system. The average annual salary of the Filipino insular teacher is 533.2 pesos a year, while that of municipal teachers is 210.36 pesos. The Filipino insular teachers are drawn from graduates of normal schools and also from the students sent by the government and at the expense of the government to the United States to be educated there. Forty-six of these students have recently returned from the United States and have been appointed as insular teachers at salaries ranging from 840 to 960 pesos per annum. The average paid to the American teacher is about $1,200 per annum. The total enrollment for the year, inclusive of the Moro Province—the schools in which are conducted under a separate system—was 479,978. This was in the month of March at the close of the school year, when the enrollment reached its highest point. The average enrollment total by months was 346,245, of whom 62 per cent were boys and 38 per cent were girls. The average daily attendance was 269,000, or a percentage of attendance of about 85 per cent. The highest percentage of attendance was 94, in the city of Manila. The lowest percentage in some of the provinces was 78. The attendance and enrollment in schools begins in August, which is the beginning of the school year, and ends in March. As August is one of the wet months, the attendance begins at the lowest figure and increases gradually into the dry season until its highest point at the close of the school year in March.

The central government this year for school purposes and construction of schools has appropriated 3,500,000 pesos. The maintenance of primary schools is imposed by law upon the municipalities, and involves a further expenditure of nearly a million and a half pesos. In order to relieve distress incident to agricultural depression, it was found necessary to suspend the land tax, a part of the proceeds of which by mandatory provision of law was appropriated to the support of municipal schools. The central government in the first year appropriated a sufficient sum from the internal revenue to meet the deficit caused by the failure to impose the land tax, but in the present year it was only able to appropriate 50 per cent of the amount which

would have been raised by the land tax, and next year no such appropriation will be made, and it will be left optional with the province whether the land tax shall be imposed or not.

The great difficulty in the matter of education in the Islands is the lack of funds to make it as extended as it should be. The suspension of the land tax is subjecting the educational system to a crisis, but the revival of agriculture in many parts of the Islands leads to the hope that the crisis may be successfully passed. It would be entirely possible to expend for the sole benefit of the Philippine people, without the least waste, upward of two or three millions of dollars annually in addition to all that the government of the Philippine Islands—central, municipal, and provincial—can afford to devote to this object. We are not able to educate as they should be educated more than a half of the youth of school age in the Islands. The government, while contributing to the maintenance of high schools in each province, is devoting its chief attention to the spread of primary education, and in connection with primary education, and, at its close in the intermediate schools, to industrial education. Primary and industrial education carried on until the child is 14 or 15 years old is thought to be the best means of developing the Filipino people into a self-sustaining and self-governing people, and the present government has done all that it has been possible to do in developing and maintaining a proper system for this purpose. The tendency toward the development of industrial education the world over has created such a demand for industrial teachers as to make it impossible for the Philippine government to secure as many as are needed for the purpose in the Islands, and in order to have these industrial teachers it must take the time to educate them as such, just as it did the Filipino primary teachers in English.

There are now in the Islands, including art and trade schools, agricultural schools, and domestic-science schools, at least one industrial school to every province, and it is the purpose to increase this number as rapidly as resources and opportunity will permit. Under the influence of the traditions of the Spanish régime, when manual labor seems to have been regarded as an evidence of servitude, it was at first impossible to secure pupils for the great manual training school in Manila. Boys preferred to be "escribientes" or clerks and gentlemen rather than to learn to win a livelihood by the skill of their hands, but this has been rapidly overcome. In the insular school of arts and trades in Manila, where the plant and equipment is quite satisfactory, instruction is now given some 350 pupils in English, arithmetic, geography, mechanical drawing, woodworking (bench work, carving, turning, and cabinet making), ironworking (bench work, filing, blacksmithing, and iron machine work), and finishing, including painting and varnishing, to which will be added next year

boat building and wheelwrighting. At the present time there are on the waiting list some 200 pupils who seek admission but for whom no places are available. A large insular agricultural school is to be established in Manila for giving instruction in practical agriculture, and the money, 100,000 pesos, necessary for the building and construction has already been appropriated.

The influence of the primary instruction in English is shown throughout the Islands by the fact that to-day more people throughout the Islands, outside of Manila and the large cities, speak English than speak Spanish. A noticeable result of the government's activity in the establishment of English schools has been the added zeal in teaching English in private educational establishments. A Filipino school managed and taught only by Filipinos, called "Liceo," has some 1,500 pupils in Manila, and English is regularly taught as part of the curriculum of that school; the Dominican order of friars, which is primarily an educational order, has schools in and about Manila with upward of 2,000 students, and English is now made a very important part of the curriculum of those schools. The Jesuits also have two very large schools in Manila, embracing some 1,000 or 1,500 pupils drawn from all parts of the Islands, in which English is made an important branch of the study. There is considerable competition in this matter and there seems now to be a united effort to spread the knowledge of English in accordance with the government's policy. At times, as already intimated, a discordant note is heard in the suggestion that the American Government is seeking to deprive the Filipino of his native language. As his native language is really 15 or 16 different dialects, this does not seem a great deprivation. It is possible that some effort will be made to include in the primary instruction the reading and writing of the local dialect in the local schools. No objection can be made to this unless it shall interfere with the instruction in English, which it is hoped it may not do.

Should Congress be anxious to facilitate and hurry on the work of redeeming the Philippine Islands and making the Filipino people a self-governing community, it could take no more effective step than a permanent appropriation of two or three millions of dollars for ten or fifteen years to the primary and industrial education of the Filipino people, making it conditional on the continued appropriation by the Philippine government of the same amount to educational purposes which it has devoted and is now devoting annually to that purpose. The influence of the educational system introduced has not only been direct in the spread of education among the younger of the present generation, but it has also been an indirect means of convincing the Filipino people at large of the beneficent purpose of the American Government in its remaining in the Philippine Islands and of the sincerity of its efforts in the interest of their people.

FILIPINO CADETS AT WEST POINT.

Section 36 of the act of Congress, approved February 2, 1901, referring to Philippine Scouts, provides that—

"When, in the opinion of the President, natives of the Philippine Islands shall, by their services and character, show fitness for command, the President is authorized to make provisional appointments to the grades of second and first lieutenants from such natives, who, when so appointed, shall have the pay and allowances to be fixed by the Secretary of War, not exceeding those of corresponding grades of the Regular Army."

As it is thought that better results will be obtained if a few young Filipinos, especially selected, be appointed to the United States Military Academy with a view to their being commissioned officers of scouts upon graduation, I strongly recommend that Congress, by appropriate legislation, authorize the appointment of seven young Filipinos, or one for about every million of inhabitants of those Islands, as cadets at the Military Academy at West Point. This action on the part of Congress would, in my judgment, tend to further increase the zeal and efficiency of a body of troops which has always rendered faithful and satisfactory services.

SECOND: PRACTICAL POLITICAL EDUCATION.

There is no doubt that the exercise of political power is the best possible political education and ought to be granted whenever the pupil has intelligence enough to perceive his own interest even in a rude practical way, or when other competent electors are sufficiently in the majority to avoid the injury likely to be done by a government of ignorance and inexperience. The Philippine government concluded that the only persons in the Philippines who had intelligence enough to make their exercise of political power useful to them as an education and safe as a governmental experiment were those who spoke and wrote English or Spanish, or who paid $7.50 a year taxes, or whose capacity had been recognized in Spanish times by their appointment as municipal officials. Adult males who came within these classes, it was thought, ought to begin their political education by assuming political responsibility, and so they were made electors in municipal, provincial, and assembly elections, and embraced, as near as it can be estimated, about 12 to 15 per cent of the adult male population. Of course, as the common school education spreads, the electorate will increase.

Let us now examine the political education which has been given in practice to these eligible electors and the results.

MUNICIPALITIES AND PROVINCES.

By the municipal code the old municipalities under the Spanish régime, which resembled the townships of the West and the towns of

New England, were authorized to reorganize under the American Government. They consisted generally of the población, or the most centrally located and most populous settlement, with a number of barrios or outlying wards or villages, all within the municipality and under its control. The provisions of the code did not differ materially from those of similar codes in the United States, except that wherever possible and practicable the unobjectionable customs of the country were recognized and acquiesced in formally in the law. The towns were divided into classes and the salaries of the officials were limited accordingly. The provincial code provided for the organization of governments in the provinces which had been recognized as provinces under the Spanish régime. Under the original provisions of that code the government of the province—legislative and executive—was under a provincial board, consisting of a governor and treasurer and a supervisor of roads and buildings. Other appointed officers were provided, as the prosecuting attorney and the secretary of the province, who did not sit on the provincial board. The governor was originally elected by the councilmen of all the towns of the province assembled in convention, they themselves having previously been elected by the people. The treasurer and supervisor were each selected and appointed under the rules adopted in accordance with the merit system provided in a civil-service law, which was among the first passed by the Commission.

One of the early difficulties in the maintenance of an efficient government in the provinces was the poverty of the provinces and the lack of taxable resources to support any kind of a government at all. It was soon found that the provincial supervisor, who, it was hoped, might be an American engineer, was too expensive a burden for the province to carry. For a time the district superintendent of education of the province was made the third member of the provincial board instead of the supervisor, whose office was abolished. This, however, did not work well, because the time of the superintendent was needed for his educational duties. Subsequently, therefore, it was thought wise to provide a third member of the board, who served with but little compensation and who was elected as the governor was elected. The system of electing the governor by convention of councilmen of all the towns of the province was changed, so that now the governor and the third member of the board are elected by direct popular vote, while the treasurer is still appointed. It will be seen that, in this way, the government of the towns is completely autonomous, subject only to visitation and disciplinary action of the governor of the province and of the governor-general on appeal. The provincial government now, though not originally, is completely autonomous in the sense that a majority of the board which governs

the province are elected by the people. The duties of the provincial treasurer are burdensome, complex, and important to such a degree as to make it impossible thus far to find Filipinos who have been able to master the duties of the office and to give satisfaction therein, although there are quite a number of Filipino assistant treasurers and subordinates in the office of treasurer who give reasonable ground to expect that the American treasurers may be in a reasonable time supplanted by Filipino treasurers.

The question now arises what has been shown in the government of these municipalities and of the provinces in respect to the capacity of the Filipinos for complete self-government in local matters? It is undoubtedly true that the municipalities would be much more efficient had the policy been pursued of appointing Americans to the important offices in the municipalities, but there would have been two great objections to this course, one that the municipal government would not have attracted the sympathetic attention of the people as the present municipalities have—and we would thus have lost a valuable element in making such government a success—and the other that the educational effect upon the people in training them for self-government would have been much less.

When I say that the development of municipal government in the Philippines has been satisfactory, I am far from saying that it has been without serious defects. All I mean is that considering the twofold object in view—first governmental, second educational—the result thus far with all its shortcomings shows progress toward both ends and vindicates the course taken.

Up to the time of our occupation, the government had represented to the Filipino an entity entirely distinct from himself with which he had little sympathy and which was engaged in an attempt to obtain as much money as possible from him in the form of taxes. He had been taught to regard an office as the private property of the person holding it and in respect to which ordinary practice justified the holder in making as much profit from it as he could. The idea that a public office is a public trust had not been implanted in the Filipino mind by experience, and the conception that an officer who fails in his duty by embezzlement or otherwise was violating an obligation that he owed to each individual member of the public, he found it difficult to grasp. He was apt to regard the robbing of the government by one of its officers as an affair in which he had little or no interest and in which, not infrequently, his sympathies were against the government. As a consequence, the chief sense of restraint felt by municipal officials in handling public funds comes from a fear of inspection by the central government and its prosecution. The fear of condemnation by the public opinion of the local community has a much less deterrent force,

even if the official is to seek reelection. The sense of responsibility for the government they control and whose officers they elect is brought home to the people of a municipality with slowness and difficulty. This is the political education that is going on in the Filipino municipalities. We are making progress, but we must be patient, for it is not the task of a day to eradicate traditions and ideas that had their origin in a system of government under which this people lived for centuries.

Hence when we find that there is still a considerable percentage of Filipino municipal officers who have to be removed and prosecuted for embezzlement, we must not be discouraged. Early in the American occupation we had to prosecute sixteen or seventeen American provincial treasurers for defalcations in public funds. It was bitterly humiliating for the dominant race to furnish such an example, when we were assuming to teach the Filipinos the art of self-government. The American embezzlers were all promptly sent to Bilibid Penitentiary for long terms. This had an excellent effect upon both Americans and Filipinos in the Islands. The defalcations were due to a lack of good material available for these positions in the Islands. To-day the American provincial treasurers are of the highest order of public servants and are a credit to the American name. Their example has been of the utmost benefit in the training of Filipino municipal and provincial officials.

Another difficulty arising from a similar cause that we have had to meet and overcome has been the disposition of municipal councils to vote all of the available funds for the payment of their own salaries and leave nothing for the improvement or repair of roads, the construction of buildings, or the payment of school-teachers, and this although the law may, by mandatory provision, have set aside certain definite shares of the public funds for such purposes. These evils have had to be remedied by placing the funds in the hands of the provincial treasurer so as to secure the payment of the amount required by law to be devoted to educational purposes and by imposing upon the discretion of common councils to vote salaries from their funds a limitation that the total of salaries shall not exceed a certain percentage of the total funds in control of the town.

The people of the towns seem fully to appreciate the value of roads, but when it comes to exerting themselves and denying themselves for the purpose of securing the great benefit of good roads, they have not thus far nerved themselves to the sacrifice. Many miles of road have been constructed by the central government and then turned over to the municipalities for maintenance, with the result that in one or two years of the torrential rains the roads have become nothing but quagmires without any work of maintenance or repair done on them. One of the common means throughout the United States for

building roads or repairing them is to require all male adults to work upon the roads four or five days of the year, or perhaps a longer period, or to commute the work by payment of a tax. This would be the natural method of repairing roads in the Philippines; but the difficulty is that it was the method adopted by the Spaniards, and in the Spanish times the power of the local authorities to direct free labor upon the roads for a certain period of time was so greatly abused and perverted to the seeking of personal vengeance and the private profit of the local authorities that it has been impossible to obtain any popular support for a system based on the same principle, and good roads have been allowed to go to destruction rather than to run the risk of a recurrence of the old abuses.

A difficulty in connection with the maintenance of roads may be mentioned here. The old-time method of transportation in the Philippines was by a carabao or ox cart with a rigid axle and with solid wheels, the rims of which were so narrow as to cut like a knife into any road over which they traveled. Laws have been passed from time to time imposing a penalty for using wheels on public roads with tires less than a certain width, but it has not been possible to secure such an administration of the law by the provincial governments as to prevent the continuance of this abuse, although means have been taken to furnish at a very reasonable rate sets of wheels with tires of sufficient width to avoid road destruction. Local officials have been loath, when dependent for their continuance in office upon the votes of their fellow-citizens, to enforce a law the wisdom of which they fully recognize, but the unpopularity of which they also know.

It has been found that sanitary measures can not be safely intrusted to municipal authorities for enforcement whenever emergencies arise, but that some local agency of the central government must be created for the purpose. At first full power was given to the municipality to determine by ordinance where cemeteries might be established, having regard to the health of the town. This proved a most convenient instrument for partisan abuse in the religious controversies arising between the Roman Catholics and the Aglipayans. An Aglipayan municipal council would require by ordinance the immediate closing of a Roman Catholic cemetery, although it was not in the least dangerous to health, and then would permit an Aglipayan cemetery much nearer the town and in a really objectionable place. Partisans of the Roman Church in control of other municipalities would abuse their powers in the same way. The consequence was that the central and provincial authorities had to be given direct supervisory control of this matter.

Another defect in many Filipino towns I have already referred to is the evil of caciquism. Too often the presidente and other town officers use their offices to subject the ignorant residents of their respective

towns to their business control in the sale of farm products. The officer acts as the middleman in the sale and takes most of the profit from his constituent. The evil is hard to reach because the same power which compelled the sale can usually compel silence and no complaint is heard from the victims until, dimly realizing the injustice done them, they resort to criminal outbreaks and bloody vengeance. While it is too much to hope for the complete eradication of this abuse until the laborer shall acquire enough education to know his rights before the law and how to assert them, there has been much improvement in this regard since the American occupation.

The evil of caciquism shows itself in a more flagrant form when Filipino municipal or even provincial officials are vested with governmental control over non-Christian tribes, or others not of their own race, scattered through the Christian Filipino provinces. These people living in small settlements are slowly working toward a better civilization under the influence of education and are capable of much greater progress if properly treated. Such settlements were originally placed under the regular Filipino provincial and municipal governments within whose territorial jurisdiction they happened to be, but the abuses and oppression to which they were subjected necessitated an entirely different policy with respect to them and the organization of separate governments controlled directly from Manila under the interior department. Mr. Worcester, the secretary of the interior, has given especial attention to the care and development of these non-Christian tribes. It has been necessary to organize in Northern Luzon three or four subprovinces within the territorial limits of the Filipino provinces and to secure the protection of the non-Christians by the appointment generally of an American lieutenant-governor. This is also true in the province of Misamis and of Surigao in Mindanao, where it was found impossible to induce the provincial officers to spend the money appropriated out of the insular treasury for the benefit of the people for educational and road improvements directed by the central authority. The fact that the recent, and for a time seemingly incurable, tendency to disturbance in Samar has grown out of a similar cause in that island, I have already commented on in connection with another subject.

The city of Manila has not been given autonomous government. It is under the control of a municipal board of five persons appointed by the central government and is governed therefore as Washington or the City of Mexico is governed. In the proper improvement of Manila, some six or eight millions of dollars had to be expended and much business experience and foresight were required to build the new waterworks and the new sewer system, to repave the streets, to canalize the esteros, or creeks, to organize an effective police force and a new fire department. It was thought that it would not be safe to intrust the

conduct of such important business matters to a body selected by the electorate of Manila for the first time. The city of Manila has been well governed. Very large sums of money have been expended in most extensive improvements and not the slightest scandal or dishonesty has been charged in any of the city administration. It has offered a most useful model for other municipalities in the Islands to follow and has lent her engineers, her policemen, and her firemen to other towns to help the latter to better organization.

This review of shortcomings in municipal governments in the Philippines should not have the effect of discouraging those who are interested in the success of the experiment. They should be reminded that in the United States, municipal government has not been such a shining success. Moreover, the defects pointed out are not found in all Filipino towns. They have been referred to only to qualify properly the statement, which I do not hesitate to make, that autonomous municipal governments are making good progress and are gradually accomplishing the purposes for which they were created, though not so efficiently as with a people more used to governing themselves, more trained and educated in the assertion of their rights, and imbued with a higher standard of public duty. When those responsible for the policy of autonomy in municipal and provincial governments assert that it is progressing successfully, they find their words to be construed by enthusiastic theorists, who are convinced *a priori* of the complete fitness of the Filipinos to govern themselves, as completely establishing the correctness of their view; and when, on the other hand, they point out the defects in such local governments they meet the cry made by pessimists and by thick and thin adherents of the English crown-colony system that this is an admission of failure and a concession that we have gone far too fast in intrusting local governmental power of the Filipinos.

The truth, as I conceive it, lies between the two extreme positions, and while the policy adopted does not secure the best municipal government which might be secured under American agents, it does provide a fairly good government, with a training and experience and educational influence upon the people which is slowly but progressively curing the defects incident to a lack of political training and proper political ideals. The result indicates neither that the Filipinos are fitted at once for complete self-government nor does it justify the view that they may not be ultimately made capable of complete self-government by a gradual extension of partial self-government as they may become more and more fit to exercise it.

When we come to the provincial governments, we naturally have to deal with a higher order of public servants, and although we here and there find the defects I have described as occurring in municipal governments, they are less glaring and less discouraging. The truth

is, that with the guidance of the provincial treasurer, who is an American, and the sense of added responsibility that the presence of two Filipinos in the provincial board has instilled in them, the provincial officials begin to take pride in the good condition of their province. This has been stimulated by close and constant correspondence between them and the central government at Manila, represented by the assistant executive secretary, Mr. Frank Carpenter, in which provincial matters are discussed, by an annual conference of provincial governors at Manila, and by conditional contributions from the central government to provincial funds for various forms of provincial efficiency, and is evidenced by the greater amounts devoted by the provinces to the construction of public buildings, the repair and construction of roads and bridges and by the husbanding of resources and the keeping down of salaries.

The system of examination of the finances of the municipalities and of the provinces is now, as conducted in the Islands, very complete, and in one large printed volume is published the balance sheet of every province and of every municipality in the Islands for each fiscal year, so that it is possible to take a bird's-eye view each year of the financial progress made in the management of each province and town. The improvement in the financial condition of the provinces over and above what it was four or five years ago itself speaks forcibly in favor of the progress which has been made by Filipinos in provincial government.

One of the early difficulties in provincial government already pointed out was the lack of tax resources, which prevented payment of adequate salaries or the making of much-needed improvements. With the sympathetic aid and suggestion of the central government, and by the voluntary assumption of greater taxes by the people, all the provinces, save two or three, have made themselves self-supporting and have been enabled to pay good salaries. They differ largely in the amount of money that they have been able to devote to the construction of public buildings and to roads and bridges, but they are certainly beginning to appreciate the necessity for effort in this direction, and while they have refused thus far to adopt the system of a few days' enforced labor commutable by taxes, they are gradually coming to the adoption of a poll tax for public roads which in its essence and its alternatives will ultimately be an equivalent of such a system.

The report of the Auditor of the Islands shows a most gratifying improvement in the financial condition of the towns and provinces for the last five years. While the financial condition is not invariably indicative of the general character of a municipal or provincial government, a steady improvement in it from year to year is reasonably good evidence that matters of government are mending in every way.

The question of roads and bridges has not yet been solved in the Philippines. There remains yet an enormous amount of labor and capital to be expended for this purpose, but the seeds have been sown which I am convinced will lead, under the executive force and great interest of Mr. W. Cameron Forbes, the secretary of commerce and police, to the adoption of a caminero system of road repairs and maintenance which will make the intercommunication by wagon road between the various parts of the various islands satisfactory. I shall not stop to dwell on the great inherent difficulty that there is in the construction and repair of roads in the Philippines. The absence of suitable material and the destructive effect of every wet season sufficiently account for the present unsatisfactory condition in this respect. The principle rigidly adopted and enforced now is, however, that no bridge and no public building shall be constructed of anything but permanent materials—either concrete, hard wood, or metal—or iron or steel, and that no road shall be built except in a manner which shall enable local authorities, with reasonable expense, to keep it in permanent repair. In times past the necessity for haste and supposed economy has led to the use of softer woods and temporary methods of construction, which are now turning out to be much more costly than if the original expenditure had been greater.

CIVIL SERVICE.

The organization and maintenance of the central government were directed not only with a view to its efficiency, but also to its educational effect upon the Philippine people. This is shown in the appointment of three Filipinos to constitute three-eighths of the insular legislature, as well as by the opportunity offered to Filipinos to enter the civil service under a civil-service law embodying the merit system. In the beginning it was difficult to work Filipinos into the bureaus of the central government, because few of them knew English and fewer understood the American business and official methods, which, of course, obtained in the new government. As the years went on, however, under great pressure from the Commission, the proportion of Filipinos in the service was increased from year to year. Many natives had learned English and had shown an increasing aptitude for the work of the civil service. Still in many of the bureaus the progress of Filipinos to the most responsible places is necessarily slow and the proportion of them to be found in the positions of high salaries is not as large as it ought to be in the near future. The winnowing-out process, however, is steadily reducing the American employees in the civil service. It has become a body of highly deserving, faithful public servants, whom, it is hoped, the Philippine government will make permanent provision for by

secure tenure for a certain number of years with a reasonable retiring pension.

As was inevitable in the complete organization of a government effected within a few months, experience indicated that greater economy might be secured by a reduction in the number of bureaus and bureau chiefs, by the consolidation of offices and bureaus, and by the still further substitution of competent Filipinos for higher-priced Americans.

It is now nearly three years ago, therefore, since a committee of insular officials with Commissioner Forbes as chairman was appointed to make a vigorous investigation into the entire governmental system. The committee made radical recommendations as to curtailment, most of which were adopted and resulted in a very material decrease in the cost of government and increase in the proportion of Filipino employees.

In the department of justice, including the judiciary, the proportion of Filipinos had always been high. The chief justice of the supreme court and two of his associates were Filipinos, while nearly half of the judges of the courts of first instance were also natives. All but two of the prosecuting attorneys in the 35 provinces, all the justices of the peace, and nearly all the court officers were Filipinos. For two years the attorney-general of the Islands has been a Filipino.

The changes in the proportion of Filipino civil servants to the whole number from year to year can be seen in the following table:

	Americans.	Filipinos.
1901	2,044	2,562
1902 a	.....	.....
1903	2,777	2,697
1904	3,228	3,377
1905	3,307	4,023
1906 a	.....	.....
1907	2,616	3,902

a Statistics not available.

CIVIL RIGHTS.

Before discussing the provision for the national assembly and its influences, educational and otherwise, I must refer to the effort of President McKinley to extend to the Filipinos the guaranties of life, liberty, and property, secured by the Federal Constitution to those within Federal jurisdiction. The guaranties assured in the instructions of Mr. McKinley included all those of the Federal Constitution except the right to bear arms and to trial by jury.

The right to bear arms is one that can not safely yet be extended to the people of the Philippines, because there are among those people men given to violence, who with the use of arms would at

once resort to ladronism as a means of livelihood. The temptation would be too great and ought not to be encouraged. Nor are the people fit for the introduction of a jury system. Not yet has any considerable part of the community become sufficiently imbued with the sense of responsibility for the government and with its identification with the government. This responsibility and identification are necessary before jurors can sit impartially between society and the prisoner at the bar. Without it they are certain always to release the prisoner and to sympathize with him in the prosecution against him. The fair treatment of the prisoner is sufficiently secured in a country never having had a jury trial by the absolute right of appeal from the decision of a single judge to the decision of seven judges, with a writ of error thence to the Supreme Court of the United States. It may be that in the future it will seem wise gradually to provide for a jury in various classes of cases, but at present it would be premature.

The civil rights conferred by Mr. McKinley's instructions were expressly confirmed by the organic act of July 1, 1902. It has been the purpose of the Philippine government to make the extension of these rights a real thing and a benefit for the poorer Filipino, and progress is being made in this direction. The great obstacle to it arises from the ignorance of the people themselves as to what their rights are and their lack of knowledge as to how those rights may be asserted.

The work of impressing a knowledge of these things upon the people goes, however, rapidly on, and with the education in English of a new generation and their succession to the electorate, we can be certain that the spread of education as to popular rights and the means of maintaining them will be wider and wider, until we can have a whole community who know their rights, and knowing, dare maintain them.

Charges have been made that the existing Philippine government has not properly preserved these guaranties of civil rights. It is true that the Commission has, in effect, suspended these guaranties in a condition equivalent to one of war in some of the provinces, and has been sustained in so doing by the supreme court of the Islands and of the United States. It is also true that during a condition equivalent to war the Commission provided that no one should advocate independence, even by peaceable means, because agents of insurrection were inciting actual violence under the guise of such peaceable propaganda. With the coming of peace, the statute ceased to have effect. To-day, however, the writ of habeas corpus runs without obstruction. The liberty of the press and of free speech is real. There is no censorship of the press and no more limitation upon its editors than there is in the city of Washington. The publication of

criminal libel or seditious language calculated and intended to cause public riot and disturbance is punishable in Manila and the Philippines as it is in many of the States of the Union. This freedom of discussion and this opportunity to criticise the government, educate the people in a political way and enable them more intelligently to exercise their political rights.

THE NATIONAL ASSEMBLY.

In recommending to Congress the provision for a national assembly contained in the organic act of the Philippine government, Secretary Root and the Commission were moved by the hope and belief that the promise in the act, conditioned, as its fulfillment was, on the existence of peace in the Islands, would stimulate activity on the part of all Filipinos having political ambition to bring about tranquillity. In this respect, as already pointed out, the result has abundantly vindicated their judgment. They were further moved by the conviction that this step toward greater popular self-government would strengthen the hands of the Government by securing from the people readier acquiescence in, and greater obedience to, measures which their representatives had joined in passing, than when they were the decrees of an alien government. They further believed that by means of the assembly much more exact and practical knowledge of the needs of the country would be brought to the law-making power than in any other way. Finally, they thought that the inauguration of such an assembly would be a most important step in the main plan or policy of educating Filipinos in the science and practice of popular representative government. They were aware of the possible danger that this was a step too far in advance. They did not deny that on the part of a number elected there would be a strong inclination to obstruct the smooth working of existing government on lines of political and material progress. They anticipated the probability that in the first assembly elected the majority would be in favor of immediate independence; but in spite of all this they were clear in their forecast that the responsibilities of power would have both a sobering and educational effect that would lead ultimately to conservatism of action and to strengthening the existing government.

Let us now consider what has happened in the electoral campaign for the assembly and in its early life as a legislative body.

The powerful influence for good and for peace exercised by the Federal Party in the period just after Mr. McKinley's second election I have dwelt upon at another place. The main purpose and principle of the party was peace under the sovereignty of the United States. In drafting a platform its leaders had formulated a plank

favoring the organization of the Islands into a Territory of the United States, with a view to its possibly becoming a State. From this plank it took its name. In the first two or three years after its successful effort to bring on peace, many prominent Filipinos having political ambition became members, and in the gubernatorial elections the great majority of governors elected were Federals. And so substantially all who filled prominent offices in the government by appointment, including the judges, were of that party. Then dissension arose among prominent leaders and some withdrew from the party. The natural opposition to a government party led to the organization of other parties, especially among those known as Intransigentes. The Federal Party had founded an organ, the Democracia, early in its existence. The opponents of the government looking to immediate independence founded a paper called the Renacimiento. The latter was edited with especial ability and with a partisan spirit against the American Government.

For two years before the election of the Assembly the Filipinos who sympathized with the Renacimiento were perfecting their organization to secure a majority in the assembly. Many groups were formed, but they all were known as the Partido Nacionalista. There was some difference as to whether to this title should be added the word "inmediatista," but the great majority favored it. The party is generally known as the Nacionalista Party. During much of these same two years, the Federal Party was dormant. The proposition for statehood did not awaken enthusiasm anywhere. Many of the leaders were in office and felt no necessity for vigorous action. The quarrel between some of the directors had given the party paralysis. The party was not organized for political controversy with another party at the polls. It was merely an organization to give effective resultant force to the overwhelming feeling in favor of peace under United States sovereignty, and it was not adapted to a political fight on issues that were not in existence when it was at the height of its power for usefulness. On the other hand, in the Federal Party were many of the ablest and most conservative of the Filipinos, and it seemed wise that this nucleus should be used to form a party that represented conservatism on the issue as to independence, which the opponents of the government determined to force into the campaign for members of the assembly. It was an issue hardly germane to the subject-matter within the jurisdiction of the assembly, but it had to be met. The issue whether the Islands should have immediate independence turned on the question whether the Filipino people are now fit for complete self-government. Upon this question it was entirely natural that the burden should fall upon those who asserted the negative, and it is not strange that the electors, or a majority of them,

should believe themselves and by their votes decide themselves to be competent.

Some six months before the elections, there sprung from the ashes of the Federal Party a party which, rejecting the statehood idea, declared itself in favor of making the Philippines an independent nation by gradual and progressive acquisition of governmental control until the people should become fitted by education and practice under American sovereignty to enjoy and maintain their complete independence. It was called the Partido Nacionalista Progresista. It is generally known as the Progresista Party. The Progresista leaders were late in the field and were somewhat at a disadvantage on this account; but after they entered the fight they were energetic and vigorous. They did not mince words. They took the position fully and flatly that the people of the Philippines were not fitted for immediate independence and complete self-government and needed much education and experience before they should become so. It was natural to suppose that the cry of complete fitness for self-government was the popular one and that it would attract votes. This impression showed itself in a somewhat amusing way. The first independence party, as I have said, called itself the Partido Nacionalista Inmediatista. The title and organization were not radical enough for a group that broke away and called itself Partido Nacionalista Urgentissima, which was supposed to indicate a party whose yearning for independence was greater than that of those who wished it immediately. This was followed by the organization of a new group who showed that they were not to be outdone in the fervor and anxiety with which they sought independence and votes for their candidates by calling their party Partido Nacionalista Explosivista.

The campaign in the last two or three months was carried on with great vigor. The Nacionalistas had the advantage of being understood to be against the government. This, with a people like the Filipino people, who had been taught to regard the government as an entity separate from the people, taxing them and prosecuting them, was in itself a strong reason for popular sympathy and support. The Progresistas were denounced as a party of officeholders. The government was denounced as extravagant and burdensome to the people. In many districts the Nacionalista candidates promised that if they were returned immediate independence would follow. There were quite a number of candidates in country and remote districts where the controversy was not heated who did not declare themselves on the main question, and maintained an independence of any party. They were known as Independientes. Then, there were other Independientes who declared themselves independent of party, but in favor of immediate independence.

The elections were held on July 30. Members were elected from 80 districts into which the Christian Filipino provinces were divided. The result of the canvass was the election of 16 Progresistas, 1 Catolico, 20 Independientes, 31 Nacionalistas, 7 Inmediatistas, 4 Independistas, and 1 Nacionalista Independiente, in all 80 members.

The total vote registered and cast did not exceed 104,000, although in previous gubernatorial elections the total vote had reached nearly 150,000. The high vote at the latter elections may be partly explained by the fact that at the same elections town officers were elected, and the personal interest of many candidates drew out a larger number of electors. But the falling off was also in part due, doubtless, to the timidity of conservative voters, who, because of the heat of the campaign, preferred to avoid taking sides. This is not a permanent condition, however, and I doubt not that the meeting of the assembly and the evident importance of its functions when actually performed will develop a much greater popular interest in it, and the total vote will be largely increased at the next election.

I opened the assembly in your name. The roll of the members returned on the face of the record was called. An appropriate oath was administered to all the members and the assembly organized by selecting Señor Sergio Osmeña as its speaker or presiding officer. Señor Osmeña has been one of the most efficient fiscals, or prosecuting attorneys, in the Islands, having conducted the government prosecutions in the largest province of the Islands, the province and island of Cebu. He was subsequently elected governor, and by his own activity in going into every part of the island, he succeeded in enlisting the assistance of all the people in suppressing ladronism, which had been rife in the mountains of Cebu for thirty or forty years, so that to-day there is absolute peace and tranquillity throughout the island. He is a young man not 30, but of great ability, shrewdness, high ideals, and yet very practical in his methods of dealing with men and things. The assembly could have done nothing which indicated its good sense so strongly as the selection of Señor Osmeña as its presiding officer.

Many successful candidates for the assembly seem to have embraced the cause of the Inmediatistas without having thought out deliberately any plan by which a policy of immediate independence could be carried out. They joined the party and united in its cry because it was a popular one and because they thought that this was an easy method of being elected, or rather because they thought that without this, election would be difficult. When the assembly met it was quite apparent that the great majority were much more anxious to vindicate their election as a dignified, common-sense, patriotic branch of the legislature by a conservative course than to maintain consistency between their acts as legislators and their ante-election declarations.

There are, of course, some members who are likely at times to make speeches containing violent language, but on the whole there seemed to be during my stay in the Islands, of two or three weeks after the organization of the assembly, a very earnest wish that the assembly should show the conservatism which many of us believe exists in the Philippine people, rather than it should give a weapon to the enemies of the people and popular government by extravagance and useless violence of speech.

Since I left the Islands the Assembly has voted for two resident commissioners to represent the Islands at Washington as provided in the organic act of the Philippine government. These commissioners are elected by the Assembly and the Commission sitting in separate session. The two candidates tendered by the Assembly to the Commission and accepted by the latter were Mr. Benito Legarda, at present one of the Filipino Commissioners, and Mr. Pablo Ocampo, of Manila. Mr. Legarda is one of the founders of the Federal Party and a Progresista. He has been many times in the United States and speaks English. He is one of the most prominent and successful business men in the Islands, and a public-spirited citizen of high character. Mr. Ocampo was an active sympathizer with the insurrection and acted as its treasurer. He was deported to the island of Guam by the military authorities in the days of the military government. He is a prominent and able member of the bar of the Islands and a man of high character. He took part in the organization of the Nacionalista Party which he wished to have called Unionista. He is understood to have objected to the word "inmediatista" and to have withdrawn from the party on that account.

As a shibboleth—as a party cry—immediate independence has much force, because it excites the natural pride of the people, but few of their number have ever worked out its consequences, and when they have done so they have been willing to postpone that question until some of the immediate needs of the people have been met. I may be wrong, but my judgment is that the transfer of real power by giving to the people part of the legislative control of the Christian provinces sobers their leaders with the sense of responsibility and teaches them some of the practical difficulties of government. They wish to vindicate their view in respect to their fitness to govern themselves completely by exercising the power of the government which has been accorded to them in a way to make the people of the United States and of the world believe that when greater power is extended, they may be trusted to exercise that with equal discretion and conservative common sense. They are now a real part of the government of the Islands. Nothing can be done affirmatively without the consent of the Assembly. They have been through one election and have

made election promises. Many of those promises, such as the promises of immediate independence, were of course entirely beyond the authority of the promisers. When they go back to their constituents at the next election they will find facing them not only their ante-election promises, but also responsibility for legislation and failure to legislate which will introduce new issues of a practical character, and will necessitate explanation and a caution of statement that was entirely absent in the first campaign. All this can not but have a wholesome effect upon the politics of the Filipinos and the Philippines. I do not for a moment guarantee that there will not at times be radical action by the Assembly, which can not meet the approval of those who understand the legislative needs of the Islands, but all I wish to say is that the organization and beginning of the life of the Assembly have disappointed its would-be critics and have given great encouragement to those who were responsible for its extension of political power.

The Inmediatistas, having a majority in the Assembly, are prone to divide into groups. The Independientes are organizing as a party, drawing tighter party lines, and at times act with the Progresistas, who, with their 17 votes, are enjoying the advantage of the minority party in maintaining a solidarity and party discipline that it is impossible for the leaders of the majority and the controlling party to attain. It would not be surprising if at the next election there should be a readjustment of party lines and division on other issues than those which controlled at the first election.

While I was in the Islands, provincial elections were held, at which were elected governors and third members of the provincial boards. The elections were held on party lines. The total vote exceeded that at the Assembly by more than 50 per cent. Of the governors elected, 15 were Nacionalista and 15 were Progresista. Of the third members, 15 were Nacionalista, 13 were Progresista, and 2 were of unknown party affiliation. From this it would seem that the Nacionalista victory in the assembly election should not be taken as an assurance that a permanent majority of the electors will continue to favor immediate independence.

The Assembly has shown a most earnest desire, and its leaders have expressed with the utmost emphasis their intention, to labor for the material prosperity of the Philippines and to encourage the coming of capital and the development of the various plans for the improvement of the agriculture and business of the Islands which have commended themselves to those in the past responsible for the government there. In other words, thus far the Assembly has not manifested in any way that obstructive character which those who have prophesied its failure expected to see, and who, in this respect,

paradoxical as it may appear, are equally disappointed with those anti-imperialists who have hopefully looked to the Assembly as a means of embarrassing the present government.

The organization of the Assembly is one of the great steps in the education of the Filipino people for complete self-government. One of the assumptions which must be guarded against, but which we always encounter, is that the conservative and successful use by the people of an instrumentality like that of the national Assembly is convincing proof of the people to enjoy greater power and reason for an instantaneous granting of that power. This is at variance with the theory upon which the power is granted. That theory is that the use of such an instrument is valuable chiefly as a means of educating those who use it to the knowledge of how it ought to be used and to conservatism in its use. The fact that on receiving it the people use it conservatively is by no means sufficient proof that if it were not subject to ultimate control, guidance, and restraint by the agents of the United States, it might not be misused. It is most encouraging to find it conservatively used and vindicates those who urged its adoption, but it is far from demonstrating that this conservative use, subject to the limitations upon its power which now exist and which have a necessary tendency to make its use conservative, would be preserved under conditions in which those limitations were entirely removed. The moderate use of such an Assembly for a reasonable time may properly form a ground for the greater extension of power and the removal of some of the limitations. Progress in such a matter to be safe must be gradual.

I can not refrain from saying at this point that the attitude of the national Assembly has been much influenced by the confidence that the members and the Filipino people have in the sense of justice and impartiality of Governor-General Smith and the deep sympathy which they know he feels in their welfare and in their hopes of continued progress. He knows the Filipino people better than any other American, and he spares no effort to reconcile their real needs and their earnest desires.

I have reviewed the history of the governmental organization in order to show the consistency of the American Government in adhering to the policy laid down by President McKinley, of gradually extending self-government to the Filipinos as they shall show themselves fit. We first, therefore, have the autonomy of the municipality, restrained by the disciplinary action of the governor-general, the restraint upon the expenditure of its funds by the provincial treasurers, and the audit of its funds by the central authority; second, the partial autonomy of the provincial governments in the election of a governor, the more complete autonomy by the constitution of the provincial board of two elective members out of three, the restraint upon

the board by the presence of a member of the provincial board appointed by the governor, the visitatorial powers of the governor-general for disciplinary purposes in respect of the provincial officers, the restraining influence and assistance of the central constabulary force, the modification of complete American central control by the introduction of three appointed Filipinos into the Commission, followed after five years by the inauguration of a completely popular elective Assembly to exercise equal legislative power with the Commission. This progressive policy has justified itself in many ways, and especially in the restoration of order to which I have already referred.

SANITATION.

There is always present in every picture of Philippine progress as painted by those who have not carefully investigated the facts, a somber background of a baneful climate making it impossible for the American or European to live in health and strength in the islands for any length of time. It is true that the islands are in the Tropics, and that the variations in temperature are only about a third as much in extent as in the Temperate Zone; but, for a tropical climate, that of the Philippines is exceptionally comfortable and healthful. The monsoons blow six months from southwest across the islands and six months from the northeast, so that they are constantly windswept. This makes a radical difference between the climate of the islands and that of the lowlands of India for instance. The last two decades, especially the latter, have taught us much in respect to tropical diseases, their causes, their proper treatment, and the best method of avoiding them. This was one of the most valuable results of the Spanish war.

In his address as president of the Philippine Medical Association, in March, 1905, Dr. John R. McDill, who came first to the islands as a leading army surgeon and who left the Army to carry on a most successful practice in Manila, said:

> We have come to esteem to the utmost the climate which so effectually guards many of you against the too strenuous life and which is almost ideal eight months in the year, even in Manila. Our professional experience has proven that, excepting some intestinal disorders which we are rapidly preventing and curing, and a limited amount of epidemic infectious diseases, there is nothing unusual about the kind or amount of disease encountered here, or its successful treatment when hospital care is available. The surgeon's work has fully demonstrated that ideal wound healing and convalescence after operation is as much the rule here as anywhere in the world. We physicians also know that, and appreciate that the dread diseases of childhood so prevalent at home are rare here, and that of all the ills particularly among women from real bodily ailments to a poor complexion for which the climate is usually blamed, the great majority are hereditary or acquired, were brought here by the patient and often aggravated by careless and unhygienic living. For old people and

children, the climate is an earthly elysium. * * * With the improved and constantly improving conditions of living, we believe that almost all will agree that by observing the normal and moral life, healthy Americans can live about as long here and enjoy as good health and do as much good and hard work, more than three-fourths of the year, as we could in the home land.

The death rate among American soldiers in the Philippines for the last year was 8.5 per thousand, and the previous year 8.65. General Wood reports that the size of the sick report can not be properly charged to the climate, that, taken as a whole, the reports for the years indicate a decided improvement in health conditions, and that the men leaving the islands after a regular tour of more than two years present a far better appearance than those of the incoming.

The death rate among American civilians in Manila for the fiscal year ending June 30, 1907, was 5.59 per thousand, a reduction from the previous year. The death rate among Filipinos this year in Manila was 36.9 per thousand and among Spaniards 15.84, both reductions from the previous year.

During the decade of our stay in the islands, the conditions of life for Americans have steadily bettered. We have become acquainted with hygienic methods of living, and the death rate of Americans of the same social condition in the Philippines is certainly not greater than in the cities of the Southern States, and is, as we have seen, very much less than that among Filipinos.

If the United States is to continue its governmental relations with the Philippines for more than a generation, and its business and social relations indefinitely, the fact that Americans can live healthful lives in the Philippines is important of itself; but I have cited these statistics and this expert opinion to show more than this—I believe that it has an important bearing upon another kind of progress possible among the Filipino people, and that it opens another important field of education for the American government to cultivate in the islands.

No one can be in the Philippines long without realizing that as a race the Filipinos are small of stature, slight of frame and flesh, and with small powers of resistance to epidemic diseases. It has been supposed that because of their nativity the Filipinos were not subject to the malarial, intestinal, and dysenteric troubles that afflict Americans and Europeans, and that measures taken to avoid or cure such troubles in the case of the foreigner were unnecessary and superfluous with the Filipinos. Recent investigations of a systematic kind, carried on by keeping comparative statistics of all the official autopsies made in the islands, seem to show that the assumption that the Filipinos are immune from the forms of disease I have mentioned is without foundation. The autopsies of 100 cases showed in a great majority the germs of malaria, of amœbic dysentery, and that microbe of the so-called "lazy" disease of Porto Rico known as the "hookworm." It is true

that the diseases were not active or acute, but their presence in the system of course weakened the constitution of the subject and could easily explain his anæmic condition, his smallness of stature, and small powers of resistance. Malaria, of course, is produced or at least transmitted by the mosquito, while amœbic dysentery and the "lazy" disease are water-borne and proceed directly from the miserable sources of water supply in most Filipino towns. Proper precautions can avoid all these; or at least can greatly reduce the number of victims.

In Manila, 60 per cent of all infants born die during the first year of their lives, and there is no reason to believe that infant mortality in other parts of the islands is less. This frightful percentage is brought about by ignorance and neglect of the mothers in feeding their babies. There are very few if any milch cows in the islands, and the little ones are fed with all sorts of impossible things. They die generally of a lack of nourishment. There is no reason why, if the mothers were correctly taught and proper infant food were brought within the reach of the poor, this awful rate of infant mortality might not be reduced. Not only is there an actual loss of life which might be avoided, but the babies which live through such treatment and nourishment are not apt to make strong men and women, but are likely to become victims of anæmia and other diseases mentioned as shown in the autopsies I have referred to.

I do not think it is unjust to the Spanish régime in the Philippines to say that very little if any attention was paid to sanitation according to modern methods. In the city of Manila and in the other large towns of the islands the American military medical authorities, who were the first to assume responsibility for the health of the islands, found the same utter disregard of the proper rules for the disposition of house sewage that was found in Habana. Thousands, yes, tens of thousands, of Filipinos were carried off year after year by a peculiarly virulent type of smallpox.

In Manila, in Cebu, and in Nueva Caceres, respectively, were leper hospitals, but in each the management was inefficient and the care of the inmates poor. More than this, no supervision was exercised to isolate lepers not in hospitals. Some times the poor creatures were driven out of villages by popular riots and herded together with no proper food and no shelter. The contact of lepers with the people of course only increased the number of cases of the dread disease.

In 1885 or 1886 the islands were visited by an epidemic of cholera and the prostration of the people of Manila and the Philippines, due to the rapid spread of the scourge, beggared description. In Manila the deaths were 1,000 or more a day from that cause alone for a number of weeks. The trade proximity of Manila, Iloilo, and Cebu, to China, India, Java, Burma, and the Straits Settlements, makes the

danger of transmitting tropical and other infectious diseases very much greater.

Quarantine in Spanish times was lax. The American Army medical authorities took hold of the matter of sanitation in their usual vigorous way and made much progress in the matter of quarantine and in correcting the glaringly insanitary conditions in Manila. But it remained for the civil government to effect a thorough organization of a health department which could do permanent good.

The introduction of sanitary methods by law among the people has given rise to more dissatisfaction and greater criticism of the government than any other one cause. The truth is that the people have to be educated in the effectiveness of such methods before they can become reconciled to them, and the work of the health department since the beginning of the civil government in 1901 has been obstructed, first, by the inertia and indifference of the people in respect to the matter, and second, by their active resistance to affirmative restraints upon them necessary to prevent disease.

The fight against smallpox has been so successful that in the past year not a single death from it occurred in Manila, and in the provinces of Cavite, Batangas, Cebu, Rizal, Bataan, La Laguna and La Union, where, heretofore there have been approximately 6,000 deaths per year not one was reported. In the few places in other provinces where smallpox appeared it made little headway. More than 2,000,000 vaccinations against smallpox were performed last year, and vaccination is being carried on so that it will reach every inhabitant of the islands.

In 1902 Asiatic cholera appeared. The loss the first year by reason of the methods introduced was much less than it had been fifteen or sixteen years before, but great difficulty was encountered in putting into force the health regulations and a futile attempt was made to establish quarantine between localities in the islands. Since that time a better system of isolation and stamping out the disease in the locality where it appeared has been followed, and it is gratifying to note that although the dread disease appeared each year, it was finally brought to an end on November 27, 1906, and the authorities now feel that the people have been so thoroughly roused to the best methods of treating the disease that any local reappearance of it can be readily suppressed.

In 1902 or 1903 the bubonic plague appeared in the islands. This has been suppressed by the isolation of all persons suffering from the disease and the destruction of plague-infected rats so that during the last year there were no cases of bubonic plague whatever.

When the Americans first began government in the Philippines it was reported that leprosy was so widely extended in the islands that there were probably from 25,000 to 50,000 lepers to be cared for.

After many unsuccessful efforts a leper colony has finally been established at Culion, a healthful and attractive island between Panay and Palawan, to which all the lepers of the islands are now being gradually removed. The number probably does not exceed 3,000. The course pursued is to take each province separately and by thorough investigation of the reported cases of lepers, determine those of true leprosy and to remove them thence to the colony of Culion. The experiment at first was a doubtful one because of the objection of the lepers to being taken so far away from their homes, and some of the friends of lepers made vigorous objections to this course. After the removal of the first 500, however, and when they found how comfortable and agreeable life at Culion was, the objections ceased. Leprosy as a disease usually does not directly kill its victims, but it so weakens the powers of their resistance that the rate of mortality from other causes among lepers is very high. The system of isolation and withdrawing lepers from the thickly populated communities has been at once justified by the reduction in the number of new case. The number of known lepers in the archipelago on September 1, 1905, was 3,580; on June 30, 1907, it was 2,826, a decrease of 654, due to the death of the known lepers without any spread of the disease as had been the case in previous years and under different conditions. The policy of removal of lepers is one which can only be carried out gradually and has been applied only to a part of the provinces, but it will probably be completed in three or four years when all the lepers will be removed to Culion and the effect of this isolation will certainly be to reduce the infection of healthful persons with the awful disease to a minimum.

The fruitful source of the spread of amœbic dysentery is the drinking of impure water. The water supply of Manila is drawn from the Mariquina River after it has passed through three or four thickly populated towns and an immense amount of trouble and labor has been expended in trying to preserve the river from contamination by these towns. Military forces have been picketed along the banks and the most stringent regulations have been enforced against the inhabitants. Much has been accomplished in this matter, but still the water is dangerous to drink unless boiled and filtered. With a view to the removal of this difficulty, new waterworks are in the process of building at a cost to the city of Manila of about two millions of dollars. The water is to be drawn from a point very much farther up the Mariquina River, at a distance of about 25 miles from Manila, and is to be accumulated in a reservoir by damming the river at a point where nature apparently intended a dam to be put. Pure mountain water will thus be obtained which is to be carried to the city of Manila simply by the power of gravity. The new improvement is 80 per cent done and water will flow into the city probably by July of 1908.

In addition to this a new sewer system has been projected and is under construction in the city of Manila and 18 miles of the deep and main trunk sewers have been laid in the city. The mileage of the remainder of the sewers is very much greater, but the engineer estimates that about half of the work has been done. The project contemplates the establishment of reservoirs and the pumping of sewage out into the bay at such a distance as to prevent its retaining any noxious character. The difficulty of sewering Manila can be understood when it is known that the level of the ground in the city is only a few feet above high water mark. With the completion of the water and sewer systems and the canalization of the esteros or canals, with which the city is threaded, a work which is projected and which will cost about $400,000, there is no doubt that Manila will become as healthful a tropical city as there is in the world.

The very high death rate in the city is due to the frightful mortality among the native infants under 1 year of age already alluded to. The absence of pure milk for babes in the Philippines accounts for a good deal of this mortality, and a charitable organization has been established for the circulation at reasonable cost of milk for infants among both the poor and rich classes. The destruction of all the horned cattle by rinderpest has reduced the supply of milk and made it expensive. This adds greatly to the difficulty presented. The lack of nourishment makes the child an easy victim to any disease, and until Filipino mothers are taught properly to bring up their children, we may expect this infant mortality to continue, but it is subject to cure, and the methods adopted by the government and the charitable organizations, including the churches, whose interest is aroused, may be depended on to bring about a reform in this matter.

It is a fact that throughout the islands too, a great deal of the mortality, among both children and adults, is due to water-borne diseases. The supply of water in each village is generally contaminated and noxious. The government has taken steps to induce every town to sink artesian wells for the purpose of giving its inhabitants pure water. Several well-boring machines have been purchased by the government and have been offered to the towns for use by them on condition of their supplying the fuel and the labor necessary. Wherever artesian wells have been sunk and a good supply of water found, the death rate in the town has been reduced 50 per cent. With a knowledge of the effectiveness of this remedy, it is certain that the government will continue to press upon the towns the necessity of the comparatively small expenditure necessary to secure proper water, for it appears that in most towns in the islands artesian water is available.

There is no reason why the whole Filipino race may not be made stronger and better by the pursuit of proper sanitary methods with

respect to the ordinary functions of life. The spread of education, the knowledge of cause and effect in this matter, together with the sympathetic assistance and regulation of the government are all that is needed to rid the Filipino of the obstructions to bodily growth and strength which injurious microbes and bacteria living in the body now create. The bureau of health and the bureau of science, which has actively aided the bureau of health in the investigations made, have now commended themselves to the Filipino people in such a way that there is every reason to hope that the foundation for better health in the islands has been permanently laid.

The government has this year established and begun a Government Medical School, the faculty of which is made up partly of Filipinos and partly of Americans, and the most modern methods of instruction are projected. A fine laboratory, already erected near the place where the medical school building is to be constructed and a general government hospital in the immediate neighborhood will furnish a nucleus for the study of tropical diseases and the proper methods of sanitation. The graduates of this college as they grow in number and spread all over the islands into regions most of which have never known a physician at all will greatly contribute to the physical change and development for the better of the Filipino.

The health department has been exceedingly expensive, and the amount taken from the treasury each year has been subject to much criticism, but the results are so gratifying that even the most captious seems now willing to admit that the expenditure was wise, prudent, and justified. A most thorough quarantine has been established and maintained under the auspices of the United States Public Health and Marine-Hospital Service in the ports of entry in the islands.

As is well understood now the mosquito is the means of communicating malaria and yellow fever and other diseases. It is supposed that the Stegomyia mosquito, which carries the yellow fever, is found in the Philippines, although no case of the fever has ever occurred in the Islands. The importance of the mosquito in the Philippines is confined to malaria at present. Varieties of the insect carrying most malignant malaria are found to generate in the salt-water marshes, though ordinarily it has been supposed that the Anopheles mosquito conveying malaria generated only in fresh water. The wet season seems to interfere with the operations of the mosquito by throwing so much water into the streams as to prevent the stagnation necessary to their successful propagation. A singular instance of this is found in the old walled city of Manila. The old walled city has a sewer system for storm or surface-water drainage. During the wet season there is practically no malaria in the walled city, but during the dry season there is a great deal. It has been found that in the dry

season in the absence of rainy weather the sewers contain stagnant pools in which the Anopheles mosquito is generated in great numbers and thus carries on his business of conveying malaria from one inhabitant of the walled city to another, whereas in the rainy season the sewers are flushed all the time and there is no opportunity to the mosquito to propagate. Measures have now been taken to flush the sewers of the walled city in the dry season and rid the inhabitants of this pest until the new sewer system shall be put in operation, when the evil can be entirely eradicated.

BENGUET.—A HEALTH RESORT.

In all the tropical countries in which civilized government has been established and progress made toward the betterment of conditions of human life, places have been found and settlements effected in high altitudes where the conditions approximate in atmosphere and climate those of the Temperate Zone. This is true in India, in Ceylon, in Java, and wherever there are neighboring mountains which offer the opportunity.

The Philippines are fortunate in having a territory in Luzon in the mountains of an altitude ranging from 4,500 to 7,000 feet, a rolling country filled with groves of pine trees and grass, in which the temperature rarely goes below 40° and never goes above 80° in the shade. The province containing most of this territory is called "Benguet." Similar climate is found in the adjoining provinces of Lepanto and Bontoc. The railway from Manila to Dagupan has now been extended to what is called "Camp No. 1," a distance of 22 miles from Baguio, the chief town in Benguet, where is the government sanitarium and other places of resort and cure. At the cost of about two millions of dollars, the government has constructed a fine road up the gorge of the Bued River to a height of 5,000 feet. The work would probably never have been entered upon, had it been supposed that it would be so costly, but now that it is done, and well done, the advantages accruing and soon to accrue, justify the expenditure.

The representatives of all the churches in the islands have taken lots and are putting up buildings, hospitals of various kinds are to be erected, there is a sanitarium, the Commission holds part of its sessions there, and it is hoped that the assembly will see fit to do the same thing. A great many Filipinos recuperate by going to Japan or Europe, but here within easy distance of Manila will be offered an opportunity where the same kind of revitalizing atmosphere may be found as in a temperate climate. The Filipinos were at first disposed to criticise the expenditure on the ground that the road was built solely for the few American officials who expected to live there a large part of their time. The lots were offered at public auction and a great many were purchased by Filipinos, and

now it is generally understood that the value of such a place in the Philippine Islands has impressed itself upon the Filipino public at large. The present necessity is the construction of a railroad from Camp No. 1 directly into Baguio and steps have been taken to bring this about. A large military reservation has been set aside which it is hoped may be made into a brigade post for the recuperation of our soldiers while in the Philippines. The railroad is likely to have the patronage of those who spend part of their time at Baguio, going and coming from Manila and other parts of the islands, and also with the construction of a good hotel in Manila and another one at Baguio there is not the slightest reason to doubt that a large tourist patronage will be invited for both places. Meantime the health-giving influence of the climate at Baguio can not but exercise a good effect upon the young Filipinos who may be sent there to be educated and upon those Filipinos who have been subject to tropical diseases and have the time and means for visiting this mountain resort. With the construction of a railroad, transportation to Baguio may be made exceedingly reasonable and sanitariums built which will furnish for very moderate cost a healthful regimen and diet. Benguet is really a part of the system of government sanitation and may properly be mentioned in connection with it here.

Comparative mortality from January 1, 1901, to September 30, 1907.

Month.	1901.		1902.		1903.		1904.	
	Number of deaths.	Annual death rate per 1,000.	Number of deaths.	Annual death rate per 1,000.	Number of deaths.	Annual death rate per 1,000.	Number of deaths.	Annual death rate per 1,000.
January	753	a 36.25	760	a 36.58	602	a 28.98	796	b 42.64
February	689	a 36.72	706	a 37.63	511	a 27.23	709	b 40.59
March	885	a 42.66	770	a 37.06	539	a 25.94	751	b 40.23
April	886	a 44.07	1,327	a 66.01	549	a 27.31	748	b 41.40
May	903	a 43.47	1,688	a 81.26	770	a 37.06	766	b 41.03
June	621	a 30.89	1,418	a 70.54	592	a 29.45	800	b 44.28
July	608	a 29.27	2,223	a 107.02	620	b 33.21	866	b 46.39
August	702	a 33.79	1,712	a 82.42	862	b 46.17	1,032	b 55.28
September	767	a 38.15	1,132	a 56.31	1,228	b 67.97	1,064	b 58.89
October	855	a 41.16	927	a 44.62	1,217	b 65.19	1,018	b 54.53
November	848	a 42.18	1,035	a 51.48	974	b 63.91	957	b 52.97
December	858	a 41.30	753	a 36.25	894	b 47.89	794	b 42.53

Month.	1905.		1906.		1907.	
	Number of deaths.	Annual death rate per 1,000.	Number of deaths.	Annual death rate per 1,000.	Number of deaths.	Annual death rate per 1,000.
January	685	b 36.69	737	b 39.47	682	c 33.31
February	608	b 36.05	595	b 35.28	473	c 27.59
March	563	b 30.15	600	b 32.13	464	c 24.45
April	530	b 29.32	555	b 30.27	416	c 22.65
May	526	b 28.16	600	b 32.13	462	c 24.35
June	593	b 32.81	693	b 36.72	402	c 21.89
July	747	b 40.00	1,451	b 77.72	515	c 27.14
August	841	b 45.03	1,182	b 63.31	653	c 34.41
September	1,013	b 56.06	835	b 46.22	768	c 41.82
October	850	b 45.51	684	b 36.64	.....	.....
November	944	b 52.24	653	b 36.14	.....	.....
December	841	b 45.03	597	b 31.98	.....	.....

a Death rate computed on population of 244,732 (health department's census).
b Death rate computed on population of 219,941 (official census, 1903).
c Death rate computed on population of 228,542 (health census, 1907).

Mortality compared with same period of previous years.

	First quarter.		Second quarter.		Third quarter.		Fourth quarter.	
	Number of deaths.	Annual death rate per 1,000.	Number of deaths.	Annual death rate per 1,000.	Number of deaths.	Annual death rate per 1,000.	Number of deaths.	Annual death rate per 1,000.
1901	2,327	42.93	2,410	43.97	2,077	47.49	2,561	46.22
1902	2,236	41.25	4,433	80.89	5,067	91.46	2,715	29.00
1903	1,652	30.48	1,911	34.87	2,710	48.91	3,085	55.68
1904	2,256	41.16	2,314	42.22	2,962	53.46	2,769	49.98
1905	1,856	34.24	1,649	30.09	2,601	46.94	2,635	47.56
1906	1,932	35.64	1,848	33.72	3,468	62.59	1,984	34.90
1907	1,569	28.48	1,280	22.98	1,936	34.38	.....	.....

MATERIAL PROGRESS AND BUSINESS CONDITIONS.

I come now to material conditions in the islands and the progress that has been made in respect to them. While there is reason to hope that the mining industry may be very much improved and developed, the future of the islands is almost wholly involved in the development of its agricultural resources, and the business of the islands must necessarily depend on the question of how much its inhabitants can get out of the ground. In bringing about the reforms and making the progress which I have been detailing, the government has had to meet disadvantageous conditions in respect to agriculture that can hardly be exaggerated.

The chief products of the islands are abacá, or Manila hemp as it is generally called, the fiber of a fruitless variety of banana plant; cocoanuts, generally in the form of the dried cocoanut meat called "copra;" sugar, exported in a form having the lowest degree of polarization known in commerce, and tobacco exported in the leaf and also in cigars and cigarettes. There are other exports of course, but these form the bulk of the merchantable products of the islands. In addition to these, and in excess of most of them except hemp, is the production of rice which constitutes the staple food of the inhabitants. Some years before the Americans came to the islands the production of rice had diminished in extent because the hemp fiber grew so much in demand that it was found to be more profitable to raise hemp and buy the rice from abroad. In the first few years of the American occupation, however, during the insurrection and the continuance of the guerrilla warfare, and finally the prevalence of ladronism, many of the rice fields lay idle and the importation of rice reached the enormous figure of twelve millions of dollars gold, or about four-tenths of the total imports. With the restoration of better conditions, the production in rice has increased so that the amount of rice now imported is only about $3,500,000 in gold, and the difference between the two importations doubtless measures the increased native production of the cereal.

During the six years of American occupancy under the civil government agriculture has been subject to the violent destruction which is more or less characteristic of all tropical countries. The typhoons have damaged the cocoanut trees, they have at times destroyed or very much affected the hemp production, and drought has injured the rice as well as the cocoanuts. The character of the tobacco leaf has deteriorated much because of a lack of care in its cultivation due to the loose and careless habits of agriculture caused by war and ladronism, and locusts have at times cleared the fields of other crops without leaving anything for the food of the cultivators.

The great disaster to the islands, however, has been the rinderpest, which carried away in two or three years 75 or 80 per cent of all draft cattle in the islands. This was a blow under which the agriculture of the islands has been struggling for now four or five years. Attempts were made, under the generous legislation of Congress appropriating three millions of dollars to remedy the loss if possible, to bring in cattle from other countries, but it was found that the cattle brought in not being acclimated died, most of them before they could be transferred to the farm, and then too they only added to the difficulty of the situation by bringing new diseases into the Philippines. It has been found that nothing can restore former conditions except the natural breeding of the survivors, and in this way it will certainly take five or six years more to restore matters to their normal condition. Meantime, of course, other means are sought and encouraged for transportation and for plowing. The difficulty in the use of horses is that an Indian disease called the "surra," which it has been impossible to cure, has carried off 50 per cent of the horses of the islands. Considering these difficulties, it seems to me wonderful that the exports from the islands have so far exceeded the exports in Spanish times and have been so well maintained that last year there was more exported from the islands than ever before in the history of the Philippines, as will be seen from the following table:

Value of Philippine exports, 1903–1907 of American occupation.

Fiscal year.	Hemp.	Sugar.	Tobacco and manufactures.	Copra.	All other.	Total.
	Dollars.	*Dollars.*	*Dollars.*	*Dollars.*	*Dollars.*	*Dollars.*
1903	21,701,575	3,955,568	1,882,018	4,478,029	1,107,709	33,119,899
1904	21,794,960	2,668,507	2,013,287	2,527,019	1,246,854	30,250,627
1905	22,146,241	4,977,026	1,999,198	2,095,355	1,134,800	32,352,615
1906	19,446,769	4,863,865	2,389,890	4,043,115	1,173,495	31,917,134
1907	21,085,081	3,934,460	3,129,194	4,053,193	1,511,429	33,713,357
Average annual	21,234,925	4,079,885	2,282,716	3,438,342	1,234,857	32,270,726

NOTE.—Total exports do not include gold and silver coin.

The largest export showing in Spanish times, during years for which there are official statistics, was as follows:

Value of Philippine exports in Spanish times, calendar years 1885–1894.

Calendar year.	Hemp.	Sugar.	Tobacco and manufactures.	Copra.[a]	Total, including all other articles.
	Dollars.	*Dollars.*	*Dollars.*	*Dollars.*	*Dollars.*
1885	5,509,757	8,669,522	2,297,358	.....	20,551,434
1886	4.340,058	7,019,978	2,010,098	5,781	20,113,847
1887	8,161,550	6,156,709	1,559,070	36,809	19,447,997
1888	8,099,422	6,271,030	2,449,181	131,347	19,404,434
1889	10,402,614	9,101,024	2,255,494	209,820	25,671,322
Average annual	7,302,680	7,443,653	2,114,240	76,752	21,037,807
1890	6,925,564	7,265,030	2,469,033	85,764	21,547,541
1891	10,323,913	5,696,746	2,150,306	.....	20,878,359
1892	6,886,526	7,768,595	2,535,740	743,918	19,163,950
1893	7,697,164	10,368,883	2,433,304	414,652	22,183,223
1894	7,243,842	5,476,617	1,576,175	1,172,191	16,541,842
Average annual	7,815.402	7,315,174	2,232,912	488,305	20,062,983

[a] Value of cocoanuts included.

NOTE.—Figures are taken from "Estadistica general del comercio exterior de las Islas Filipinas," issued by the Spanish Government.
Total exports include gold and silver coin.

The chief export in value and quantity from the Philippines is Manila hemp, it amounting to between 60 and 65 per cent of the total exports. Its value has increased very rapidly of late and the result has been that much inferior hemp has been exported, because it could be produced more cheaply and in greater quantity. That which has made the hemp expensive and has reduced the export of it—for large quantities of it rot in the field still—is the lack of transportation and the heavy expense of the labor involved in pulling the fiber and freeing it from the pulp of the stem. Several machines have been invented to do this mechanically and it seems likely now that two have been invented which may do the work, although they have not been sufficiently tested to make this certain. Should a light, portable, and durable machine be invented which would accomplish this, it will revolutionize the exportation of hemp and will probably have a tendency to reduce its cost, but greatly to increase its use and to develop the export business of the Philippine Islands most rapidly.

SUGAR AND TOBACCO—REDUCTION OF TARIFF.

There is a good deal of land available for sugar in the Philippines, but there is very little of it as good as that in Cuba, and the amount of capital involved in developing it is so great that I think the possibility of the extension of the sugar production is quite remote. The moment it expands, the price of labor which has already increased 50 to 75 per cent will have another increase. All that can really be expected

is that the sugar industry—and this is also true of the tobacco industry—shall be restored to their former prosperity in the earlier Spanish times when the highest export of sugar reached 265,000 tons to all the world.

The tobacco industry needs a careful cultivation which, under present conditions, it is very difficult to secure. The carelessness with which the plant is grown and the defective character of the leaves is such as to make the manufacturers of cigars and tobacco in Manila despair of using the Philippine product without the addition of the wrappers either from Sumatra or the United States.

All that a friend of the Philippines can hope for is that the sugar and tobacco industries shall regain their former reasonably prosperous conditions. The development of the islands must be in another direction. The question of labor and capital both must always seriously hamper the growth of sugar production. Nor would I regard it as a beneficial result for the Philippine Islands to have the fields of those islands turned exclusively to the growth of sugar. The social conditions that this would bring about would not promise well for the political and industrial development of the people, because the cane sugar industry makes a society in which there are wealthy landowners holding very large estates with most valuable and expensive plants and a large population of unskilled labor, with no small farming or middle class tending to build up a conservative, self-respecting community from bottom to top. But, while I have this view in respect to the matter, I am still strongly of the opinion that justice requires that the United States should open her sugar and tobacco markets to the Philippines. I am very confident that such a course would not injure, by way of competition, either the sugar or the tobacco industries of the United States, but that it would merely substitute Philippine sugar and tobacco for a comparatively small part of the sugar and tobacco that now comes in after paying duty. Their free admission into this country would not affect the prices of sugar and tobacco in the United States as long as any substantial amount of those commodities must be imported with the full duty paid in order to supply the markets of the United States.

So confident am I that the development, which the sugar and tobacco interests of the United States fear in the Philippines from an admission of those products free to the United States, will not ensue to the injury of those interests that I would not object to a limitation on the amount of sugar and tobacco in its various forms, manufactured and unmanufactured, which may be admitted to the United States from the Philippines, the limitation being such a reasonable amount as would admittedly not affect the price of either commodity in the United States or lead to a great exploitation of the sugar and

tobacco interests in the islands. The free admission of sugar and tobacco up to the amount of the proposed limitation, for the purpose of restoring the former prosperity in these two products to the islands, is very important. There are two or three provinces, notably Occidental Negros and the island of Iloilo, the prosperity of which is bound up in good markets for sugar, and this is true also of some parts of Laguna, Cavite, Bulacan, and Pampanga, where sugar was raised in the old days with success and profit. In respect to tobacco, the need is not so pressing because the territory in which marketable tobacco culture prevails is by no means so great. Still it does affect three provinces, Cagayan, Isabela, and La Union.

FODDER.

The agricultural bureau of the government has been devoting a great deal of effort and time and money to experimenting in agriculture. They have made many failures and have not yet succeeded certainly in sowing a grass which will properly cure and may be used for hay. It is hoped that in certain of the higher altitudes alfalfa, and especially clover, may be raised successfully; and if so the very high price which has now to be paid for fodder imported from America may be avoided. This is a question which seriously affects the cost of the Army in the Philippines.

NEW PLANTS.

Through the agricultural bureau a new industry has been developed, that of raising maguey, a plant, the fiber of which is much less valuable than that of Manila hemp, but which has a good market whenever it is produced in quantities. The rapidity with which a great deal of land in the Philippines that heretofore has not been capable of profitable use is now taken up with the planting of maguey is most encouraging. The plants are being distributed by the agricultural bureau in the islands.

THE FINANCIAL CONDITION OF THE GOVERNMENT.

The financial condition of the government is as good to-day as it ever has been. The following table shows what it is, and the surplus on hand for emergencies is satisfactory:

General account balance sheet of the government of the Philippine Islands for the fiscal year ended June 30, 1907.

	Debit.	Credit.
Surplus and deficiency account:		
Balance from previous years		$4,439,974.02
Excess revenues over expenditures		2,741,606.41
Excess resources over liabilities	$7,500,782.29	
Carried from suspense account		319,201.86
Total	7,500,782.29	7,500,782.29
Insular revenues and expenditures:		
Customs revenues		7,990,376.57
Internal revenue		2,684,579.24
Miscellaneous revenues		389.440.25
Insular expenditures	6,968,724.86	
Payments to provinces	1,438,440.40	
Losses under section 41, act 1402	346.20	
Allowances under section 42, act 1402	501.38	
Inter-bureau transactions		85,223.19
Total	8,408,012.84	11,149,619.25
Excess revenues over expenditures	2,741,606.41	
	11,149,619.25	11,149,619.25
Resources and liabilities:		
The insular treasurer's cash balance	25,083,490.93	
Gold-standard fund	1,006,753.13	
Surplus on customs auction sales		466.84
Invalid money orders		2,047.14
Outstanding liabilities		5,229.40
Loans to provinces	481,137.55	
Refundable export duties		418,698.89
City of Manila	3,661,255.31	
Outstanding warrants		139,136.45
Friar lands funds	6,670,548.06	
Moro Province	45,646.13	
Depositary fund		3,956,263.00
Silver certificate redemption fund		10,770,354.00
Refundable internal revenues		331,970.30
Public works and permanent improvement fund	2,198,249.70	
Congressional relief fund		286,934.79
Sewer and waterworks construction fund		1,855,081.84
Insular treasurer's liability on unissued silver certificates	9,702,500.00	
Unissued silver certificates		9,702,500.00
Miscellaneous special funds		387,095.17
Provincial governments		1,132,743.62
Philippine money-order account		182,576.54
United States money-order account		128,201.86
Bonded indebtedness		14,500,000.00
Outstanding postal drafts		2,283.29
Friar land bond sinking fund	106,216.92	
Sewer and waterworks construction bond sinking fund		39,898.34
Rizal monument fund		1,413.20
Baguio town-site improvement fund		1,525.19
Collecting and disbursing officers	2,384,404.42	
Total	51,290,202.15	43,789,419.86
Excess resources over liabilities		7,500,782.29
Total	51,290,202.15	51,290,202.15
Suspense account:		
Transfer of funds		7,674.49
General account deposits		195,263.24
Accountable warrants		116,264.13
Carried to surplus and deficiency account	319,201.86	
Total	319,201.86	319,201.86
Treasury account:		
Balance from previous fiscal years	22,461,858.40	
Receipts at the treasury	112,780,022.27	
Withdrawals from the treasury		110,347,526.19
Available for appropriation		5,218,817.54
Appropriations undrawn		4,948,919.94
Available for refundment or redemption		14,726,617.00
Total	135,241,880.67	135,241,880.67

The following statement of revenues and expenditures of the Philippine government, exclusive of all items of a refundable character, covers the period from the date of American occupation, August 18, 1898, to June 30, 1907.

Revenues.

Fiscal year ended June 30—	Insular.	Provincial.	City of Manila.	Total.
1899	$3,558,682.83			$3,558,682.83
1900	6,899,340.53			6,899,340.53
1901	10,753,459.95			10,753,459.95
1902	9,371,283.11	$2,008,480.88	$1,199,593.21	12,579,357.20
1903	10,757,455.63	2,527,252.93	1,541,575.85	14,826,284.41
1904	10,249,263.98	3,295,839.47	1,931,129.97	15,476,233.42
1905	11,549,495.37	3,107,912.91	1,441,165.82	16,098,574.10
1906	11,468,067.16	4,509,572.02	1,995,289.85	17,972,929.03
1907	11,149,619.25	4,604,528.31	1,691,341.93	17,445,489.49
Total	85,756,667.81	20,053,586.52	9,800,096.63	115,610,350.96

Expenditures.

1899	$2,376,327.12			$2,376,327.12
1900	4,758,793.66			4,758,793.66
1901	6,451,528.37			6,451,528.37
1902	8,189,404.59	$1,633,158.22	$622,294.81	10,444,857.62
1903	10,249,533.40	1,981,261.22	1,177,611.67	13,408,406.29
1904	11,122,562.38	2,339,826.10	1,578,303.50	15,040,691.98
1905	12,248,857.33	1,474,320.43	2,574,102.78	16,297,280.54
1906	10,146,779.12	4,335,091.32	2,492,392.23	16,974,262.67
1907	8,408,012.84	4,736,038.20	1,560,801.40	14,704,852.44
Total	73,951,798.81	16,499,695.49	10,005,506.39	100,457,000.69

The bonded indebtedness is as follows:

Title of bonds.	Authorized by Congress.	Amount of issue.	Date issued.	Redeemable.	Due.
Land purchase bonds	Act of July 1, 1902	$7,000,000	Jan. 11, 1904	1914	1934
Philippine public improvement bonds:					
First issue	Act of Feb. 6, 1905	2,500,000	Mar. 1, 1905	1915	1935
Second issue	do	1,000,000	Feb. 1, 1906	1916	1936
Manila sewer and water supply bonds:					
First issue	Act of July 1, 1902, as amended by act of Feb. 6, 1905.	1,000,000	June 1, 1905	1915	1935
Second issue	do	2,000,000	Jan. 2, 1907	1917	1937
Total		13,500,000			

To meet the interest and principal on these bonds ample sinking funds have been provided, and the bonds are now held on the market, notwithstanding the present depression, at prices well above those for which they were originally sold.

FRIARS' LANDS.

The question of the disposition of the friars' lands is one which is occupying the close attention of the Secretary of the Interior and the Director of Lands. The price of the lands was about $7,000,000.

Much delay has been encountered in making the necessary surveys and the disposition of them for the present has largely been temporary and at small rents in order to secure an attornment of all the tenants and the clear definition of the limits of the leaseholds claimed by them. This has involved considerable time and expense in making the necessary surveys. The injury to the sugar industry and the destruction of draft cattle has affected the price and character of the sugar lands, and they have been allowed to grow up in cogon grass. This will require the investment of considerable capital to put them in sugar producing condition. It is estimated that the salable lands would amount in value to something over $5,000,000 and that the lands, mostly sugar, which are not now salable, and the plants which were bought with the lands, represent the other $2,000,000 of the purchase price. It will take some years to work out the cost and it is possible, as already prophesied, that there will be a considerable loss to the islands, but as the purchase was based on political grounds and for the purpose of bringing on tranquillity, such a loss as that which was thought not improbable at the time of the purchase is amply compensated for in the general result.

FINAL SETTLEMENT IN RESPECT TO CHARITABLE TRUSTS AND SPANISH-FILIPINO BANK WITH ROMAN CATHOLIC CHURCH.

I have spoken in previous reports of the controversies arising between the Roman Catholic Church and the Philippine government in reference to the administration of certain charitable trusts. The same church was interested as a majority stockholder in the Spanish-Filipino Bank and a dispute had arisen as to the right of the bank to exercise the power conferred on it by its original charter of issuing bank notes in an amount equal to three times its capital stock. A compromise was finally arranged last June with Archbishop Harty of Manila and was consummated during my visit to the Philippines. I submitted to you a full report of this compromise. It received your approval and was then carried into effect by the Philippine Commission. I append to this my special report to you of that compromise, marked "Appendix A."

ROADS.

The construction of roads by the central government has gone on each year, but the roads have not been kept up by the municipal governments charged with the duty as they ought to have been. The Commission has now established a system by which it is hoped ultimately that the whole matter of roads may receive a systematic impetus throughout the islands. Roads can not be kept up in the

Tropics except by what is known as the "*caminero*" system, in which a small piece of each road shall be assigned to the repair and control of a road repairer to be known as the "caminero." The truth is that good roads will develop as the people develop, because the people can keep up the roads if they will, and it is not until they have a large sense of political responsibility that they are likely to sacrifice much to maintain them.

RAILROADS IN THE PHILIPPINES.

In my last annual report, I set forth in detail the concessions granted for the construction of railroads in Luzon, Panay, Cebu, and Negros, and showed that within five years we might expect that, instead of a single line of railway 120 miles in length which was all that we found when we occupied the islands, we would have a system with a mileage of 1,000 miles. Work has gone on in full compliance with the terms of the concessions of the two companies.

Only one of these companies took advantage of the provision for the guaranty of bonds, and they have built about 40 miles of road and have earned, under the terms of the concession, the guaranty of $973,000 of bonds, which has already been signed and delivered by the Philippine government. Of course, in this financial panic these companies are likely to have difficulty in securing investors in their securities. The roads as constructed have been well constructed, and are admirably adapted to resist the climatic conditions in the islands. There is no reason in my judgment why these roads when constructed should not pay a reasonable percentage upon the investment. It is of the utmost difficulty to secure the coming of capital to the islands, and it would greatly aid us if the dividends earned by these roads were very large. In the Orient two-thirds of the income of railways comes from passenger earnings, and one-third from freight. Of course, the railroads are very essential to the agricultural interests of the country and will directly affect the amount of exports of agricultural products—so we may count on a steady increase in the freight receipts from the moment of their beginning operation. As I say, however, the chief hope for profit in the railways is in the passenger traffic. In the three Visayas in which the railroads are to be constructed, the density of population is about 160 per square mile, whereas the average population per square mile in the United States in 1900 was but 26. The Island of Cebu has a population of 336 per square mile, or a greater density than Japan, France, Germany, or British India. It is, therefore, reasonable to suppose that the passenger earnings on these railroads will be very large. It was anticipated that the labor problem would be a difficult one to solve in the construction of these roads. This has not proved to be true. The

Philippine labor has shown itself capable of instruction, and by proper treatment of being made constant in its application. Of course, the prices of labor have largely increased, but the companies constructing the roads have found it wise to increase wages, and thereby secure greater efficiency. Even with increased wages the cost of unit of result is less in the Philippines in the construction of railways than it is in the United States. Of course, the drain on the labor supply of sugar plantations and other places where agricultural labor is employed, is great and the effect upon raising sugar and other products is to increase the cost. But I think the lesson from the construction of the railroads is that Philippine labor can be improved by instruction and can be made effective and reasonably economical by proper treatment. The coming into the islands of the capital to construct railways, of course, has had a good effect in the improvement of business conditions, but it is to be noted that in the estimate of importations the railroad material and supplies which are brought in free under the statute are not included in the totals, and therefore are not to be offered as an explanation for the very good showing in respect to the amount of imports to the islands for the last fiscal year.

GENERAL BUSINESS CONDITIONS.

Of course, the depression in certain business branches of agriculture, like sugar, tobacco and rice, due to lack of markets for the first two, and to a lack of draft animals in the production of sugar and rice has had a direct effect upon the business of the islands of a depressing character. Gradually, however, business has grown better. In spite of adverse conditions the importations of rice have decreased from $12,000,000 gold to $3,500,000 gold, and, while the imports as a whole have increased not to their highest previous figure, they have been maintained within four and a half millions of their highest mark, and, as already said, the exports are higher than ever in the history of the islands, the balance of trade in their favor for the last fiscal year being about five millions, exclusive of gold and silver and government and railway free entries.

I found in the islands a disposition on the part of both American and Philippine business men and of the leaders of all parties in the Philippine Assembly to make a united effort to improve business and general conditions.

BUSINESS FUTURE OF PHILIPPINES.

I do not hestitate to prophesy that during the next twenty-five years a development will take place in the agriculture and other business of the Philippine Islands, which will be as remarkable in its benefits to

the United States and the Philippine Islands as was the development of Alaska during the last ten or fifteen years. Hope of this is not what has actuated the government in pursuing the policy that it has pursued in the development of the islands, but this is as inevitable a result as if it had been directly sought, and perhaps the absence of selfishness in the development of the islands is a greater assurance of profitable return than if business exploitation by the United States had been the chief and sole motive. The growth in the production of hemp and other fiber products, in cocoanuts, in rubber and many other tropical crops and in peculiar manufactures of the islands may be looked forward to with certainty.

GOLD STANDARD CURRENCY.

One of the great benefits conferred upon the islands by the American Government has been the introduction of the gold standard. This has doubtless prevented the larger profits which were made in the old days by the purchasers of hemp and other agricultural products in the islands, who sold again in European and American markets, because under the system then prevailing, they bought in silver and sold in gold, and by watching the markets they were able to add very much to the legitimate profit of the middlemen by what constituted a system of gambling in exchanges. The same features characterized the banking in the islands. Now, however, with the gold standard the gambling feature in business is very largely eliminated. The coinage is satisfactory to the people, the silver certificates circulate well and are popular, and there seems to be no ground for complaint of the currency.

NEED OF CAPITAL—AGRICULTURAL BANK.

One of the crying needs of the Philippines is capital, and this whether it be for the development of railroads, wagon roads, manufactures, or in the promotion of agriculture. The usurious interest which has to be paid by the farmers is so high as to leave very little for his profit and maintenance and ever since we entered the islands the cry for an agricultural bank which would lend money for a reasonable interest, say, 10 per cent, has been urged upon the Commission. Last year Congress authorized the government to guarantee the interest at 4 per cent on a certain amount of capital invested in such a bank, but up to this time no one has embraced the opportunity thus offered to undertake the conduct and operation of a bank although negotiations are pending looking to such a result. It is now proposed that the government shall undertake this instead of a private individual. Experimentation has been attempted on the

friars' lands by the appropriation of $100,000 for loans to the friar tenants to encourage them to improve agriculture, and the result of this experiment will be awaited with great interest.

The reduction of the amount of silver in the silver peso for the purpose of keeping it within the 50-cent gold value, which is the legal standard, has gone steadily on and will result ultimately in the accumulation in the treasury of a fund of $3,000,000 gold. It is thought that part of this money might be taken to establish an agricultural bank on a governmental basis. The treasurer of the islands, Mr. Branagan, who has had large experience in banking in the islands, because his office has brought him closely into contact with it and because he has had to examine all the banks, is confident that an agricultural bank of one or two millions of dollars might be established by the government and managed by the treasury department, together with the provincial treasurers in such a way as greatly to aid the cause of agriculture in the islands. One great difficulty in the operation of an agricultural bank is the uncertainty that prevails to-day in the islands in respect to the titles of the lands which are held. The land law provided a method of perfecting titles through what is called the land court founded on the Torrens land system, which was introduced by law some years ago in the islands. The expense of surveying the lands, due to the shortness of supply of surveyors, and the time taken has made the process of settling titles rather slow, but as defects have appeared the Commission has changed them and it is hoped that this system of preparing for the business of an agricultural bank may go on apace.

POSTAL SAVINGS BANK.

A postal savings bank has been established and was first more patronized by Americans than Filipinos, but Filipinos are now taking it up and the deposits therein amount to upward of 1,000,000 pesos. There have been practically no banking facilities throughout the islands, except in Manila, Iloilo, and Cebu, and this establishment of postal savings-bank offices in a large proportion of the post-offices throughout the islands offers an opportunity to the people of moderate means to put their money in a secure place and to derive a small revenue therefrom. The insecurity of savings by Filipino farmers and others in the country has certainly reduced the motive for saving which an opportunity to deposit their money will stimulate. The exchange business of the islands has also been facilitated by statutory provisions authorizing the sale of exchange by provincial treasurers on the central treasury at Manila and vice versa.

POST-OFFICE AND TELEGRAPHS.

The post-office department, considering the conditions that exist and the difficulties of reaching remote parts of the island, has been very well managed and the offices are increasing in encouraging proportion each year.

The following table shows the increase in postal facilities from year to year of our occupation:

For fiscal year ending June 30.	Number post-offices.	Money order offices.	Number employees.	Stamp sales.
1900	19	.....	113	₱228,178.36
1901	24	24	130	233,182.96
1902	90	31	331	238,418.40
1903	209	33	570	248,414.36
1904	291	63	579	224,354.61
1905	414	62	612	222,701.36
1906	476	60	1,003	425,261.50
1907	505	63	1,091	607,203.44

Under a system devised by Mr. Forbes, secretary of commerce and police, mail subsidies were granted to commercial lines on condition that good service at reasonable rates of transportation should be furnished upon safe and commodious steamers. The Government vessels which had previously been purchased in order to promote intercourse between the islands are now used on outlying routes where commercial lines will not take up the traffic, but are used in connection with the commercial lines, and in this way additional routes are being tested and the marine commerce between all the islands is made to increase.

By consent of the Secretary of War, and on the recommendation of the commanding general of the Philippines and the agreement of the civil government, all the telegraph lines in the islands have now been transferred to the post-office department of the civil government of the Philippines. These telegraph lines reach into the remotest provinces and to all the principal islands of the large archipelago. While there were some telegraph lines in the Spanish times, the system has grown to such proportions now as to be almost an entirely new system. It has made the government of the islands much more easy because it brings every province within half a day's communication of Manila for information and instructions from the central authority. It has furnished a most profitable instrument for business communication, and while it entails considerable burden on the civil government, it is well worth for governmental and business purposes all that it costs. I ought to say that the post-office department is rapidly training Filipinos to fill all the positions of telegraph operators, and that this materially reduces the cost of operation and at the same time furnishes an admirable technical school for great numbers of bright Filipino young men. I submit a statement of the mileage of the cables and telegraph lines operated by the Government.

1906.

	Miles.	Miles.
Lines transferred to the insular government by the Signal Corps up to June 30:		
Telegraph lines	3,780	
Cable lines	328	
Telephone lines	2,137	
Total		6,245
Lines operated by the Signal Corps on June 30:		
Telegraph lines	1,406	
Cable lines	1,452	
Telephone lines	338	
Total		3,196
Total mileage of telegraph, cable, and telephone lines in operation June 30		9,441
Number of telegraph offices		161
Number of telephones in operation		450

1907.

Lines transferred to the insular government by the Signal Corps since July 1, 1907	1,914.5
Total mileage of telegraph and cable lines in operation by the insular government to date	6,951

MINES AND MINING.

There has been a good deal of prospecting in the islands and gold and copper have been found in paying quantities in the mountains of northern Luzon, the provinces of Benguet and Bontoc and Lepanto, as well as in the Camarines in southeastern Luzon, and in Masbate, an island lying directly south of Luzon; but great complaint is made, and properly made, of the limitations upon the mining law which prevent the location by one person of more than one claim on a lode or vein. Mining is such a speculative matter at any rate, and the capital that one puts into it is so generally lost that it would seem that, in a country like the Philippines where development ought to be had, there should be liberal inducements for the investment of capital for such a purpose. Secretary Worcester of the interior department has frequently recommended that this limitation of the law be repealed. The Commission joins in this recommendation and I cordially concur.

While I do not favor large land holdings, I also concur in the recommendation of the secretary of the interior and the Commission that the prohibition upon corporations holding more than 2,500 acres of land be also stricken out. It certainly might well be increased to 10,000 acres if any limitation is to be imposed at all.

U. S. COASTWISE TRADING LAWS.

It is proposed by some to put in force the coastwise trading laws in respect to the navigation between the United States and the islands.

think this a very short-sighted policy. To-day the trade between the United States and the islands, export and import, is about 17 per cent of the total. The proportion of the total export trade from the Philippines to the United States is growing and is certain to grow more rapidly in the future, especially if proper legislation is adopted in respect to sugar and tobacco. Now a coastwise trading law will exclude altogether the use of foreign bottoms between the ports of the United States and the ports of the Philippine Islands, and will confine that commerce to United States vessels. There is very grave doubt whether there are enough United States vessels to carry on this trade as it is, and even if there were they could not carry on the trade without a very great increase in freight rates over what they now are. The minute that these rates are advanced, while the rates to other countries remain the same, the trade between the islands and the United States will cease to be. There will be no trade for the vessels of the United States to carry, no one will have been benefited in the United States, and the only person who will reap advantage is the foreign exporter to whom the Philippine business house will naturally turn for exchange of products. The only method possible by which the United States vessels can be given the Philippine trade is by voting a reasonable subsidy for United States vessels engaged in that trade. Any other prohibitive or exclusive provision of law will be merely cutting off the nose to spite the face of the interest which attempts it. I feel certain that when the question of applying the coastwise trading laws to the business between the United States and the islands is fully investigated, even those representing the shipping interests that need and ought to have much encouragement will conclude that the coastwise trading laws applied to the American Philippine trade would merely destroy the trade without benefiting the shipping interests.

In the criticisms upon the Government's Philippine policy to be found in the columns of the newspapers that favor immediate separation, it has been frequently said that the coastwise trading laws of the United States apply as between islands of the Philippines. The truth is that the restrictions upon shipping between ports in the Philippine Islands are what the Legislature of the islands imposes, and Congress has made no provision of limitation in respect to them. The coastwise regulations in force within the Archipelago are as liberal as possible.

CITY OF MANILA.

The city of Manila is the social. political, and business center of the islands. It is the only large city in the islands. Its population is about 250,000. while there is no other city that exceeds 40,000 in

population. By what now has been proven to be a mistake, the Commission purchased a building which was known and used as the Oriente Hotel. It was a hotel not very well conducted, but it was the only important hotel in the city of sufficient size and dignity to induce the coming of tourists. It was hoped that the purchase of this building, which was not particularly adapted as a hotel, might lead to the construction and maintenance of a better hotel. Such has not been the result, and although there are hotels in the city of Manila, its reputation is that of being unable to furnish to the traveling public a comfortable hostelry for a short stay. This has driven away many travelers of our own country and other countries from a city that in historical interest, in beauty, and in comfort of life will compare favorably with any.

Mr. Burnham, the well-known landscape architect of Chicago, some years ago, without compensation, visited the Philippines and mapped out a plan for the improvement of the city, and laid out a plan of construction for Baguio in Benguet as the summer capital. To both of these plans, all improvements which have been attempted in the city have conformed, and if the present efficient city government continues, there is every reason to believe that Manila will become a most attractive city. A contract has been made for the leasing of ground immediately upon the Luneta and facing the bay to a firm of capitalists for the construction of a hotel to cost 500,000 pesos. It is doubtful, however, whether this capital can be raised at the present time, and if it falls through it is proposed, and I think with wisdom proposed, that the government shall erect a hotel as a public investment for the development of the city and the islands, and lease it to the best bidder.

There is no city in the world better governed than Manila. The streets are well cleaned, are well policed, there is a most excellent fire department, the parks are being enlarged and improved, the street car system is as good as any anywhere, and with the improvements in the water supply the sewerage system and esteros or canals, which are now under foot and part of which are quite near accomplished, the face which the Filipinos turn toward the world in the city of Manila will be a most pleasing one.

POLITICAL FUTURE OF THE ISLANDS.

There are in the Philippines many who wish that the government shall declare a definite policy in respect to the islands so that they may know what that policy is. I do not see how any more definite policy can be declared than was declared by President McKinley in his instructions to Secretary Root for the guidance of the Philippine

Commission, which was incorporated into law by the organic act of the Philippine government, adopted July 1, 1902. That policy is declared to be the extension of self-government to the Philippine Islands by gradual steps from time to time as the people of the islands shall show themselves fit to receive the additional responsibility, and that policy has been consistently adhered to in the last seven years now succeeding the establishment of civil government.

Having taken some part and sharing in the responsibility for that government, of course my views of the results are likely to be colored by my interest in having the policy regarded as successful, but eliminating as far as is possible the personal bias, I believe it to be true that the conditions in the islands to-day vindicate and justify that policy. It necessarily involves in its ultimate conclusion as the steps toward self-government become greater and greater the ultimate independence of the islands, although of course if both the United States and the islands were to conclude after complete self-government were possible that it would be mutually beneficial to continue a governmental relation between them like that between England and Australia, there would be nothing inconsistent with the present policy in such a result.

Any attempt to fix the time in which complete self-government may be conferred upon the Filipinos in their own interest, is I think most unwise. The key of the whole policy outlined by President McKinley and adopted by Congress was that of the education of the masses of the people and the leading them out of the dense ignorance in which they are now, with a view to enabling them intelligently to exercise the force of public opinion without which a popular self-government is impossible.

It seems to me reasonable to say that such a condition can not be reached until at least one generation shall have been subjected to the process of primary and industrial education, and that when it is considered that the people are divided into groups speaking from ten to fifteen different dialects, and that they must acquire a common medium of communication, and that one of the civilized languages, it is not unreasonable to extend the necessary period beyond a generation. By that time English will be the language of the islands and we can be reasonably certain that a great majority of those living there will not only speak and read and write English, but will be affected by the knowledge of free institutions, and will be able to understand their rights as members of the community and to seek to enforce them against the pernicious system of caciquism and local bossism, which I have attempted in this report to describe.

But it is said that a great majority of the people desire immediate independence. I am not prepared to say that if the real wish of the majority of all the people, men, women, and children, educated and

uneducated, were to be obtained, there would not be a very large majority in favor of immediate independence. It would not, however, be an intelligent judgment based on a knowledge of what independence means, of what its responsibilities are or of what popular government in its essence is. But the mere fact that a majority of all the people are in favor of immediate independence is not a reason why that should be granted, if we assume at all the correctness of the statement, which impartial observers can not but fail to acquiesce in, to wit: that the Filipinos are not now fit for self-government.

The policy of the United States is not to establish an oligarchy, but a popular self-government in the Philippines. The electorate to which it has been thought wise to extend partial self-government embraces only about 15 or 20 per cent of the adult male population, because it has been generally conceded by Filipinos and Americans alike that those not included within the electorate are wholly unable to exercise political responsibility. Now, those persons who demanded and were given a hearing before the delegation of Congressmen and Senators that visited the islands in 1905, to urge immediate independence contended that the islands are fit for self-government because there are from 7 to 10 per cent of intelligent people who are constituted by nature a ruling class, while there are 90 per cent that are a servile and obedient class, and that the presence of the two classes together argues a well balanced government. Such a proposition thus avowed reveals what is known otherwise to be the fact that many of those most emphatic and urgent in seeking independence in the islands have no thought of a popular government at all. They are in favor of a close government in which they, the leaders of a particular class, shall exercise control of the rest of the people. Their views are thus wholly at variance with the policy of the United States in the islands.

The presence of the Americans in the islands is essential to the due development of the lower classes and the preservation of their rights. If the American government can only remain in the islands long enough to educate the entire people, to give them a language which enables them to come into contact with modern civilization, and to extend to them from time to time additional political rights so that by the exercise of them they shall learn the use and responsibilities necessary to their proper exercise, independence can be granted with entire safety to the people. I have an abiding conviction that the Filipino people are capable of being taught self-government in the process of their development, that in carrying out this policy they will be improved physically and mentally, and that, as they acquire more rights, their power to exercise moral restraints upon themselves will be strengthened and improved. Meantime they will be able to see, and the American public will come to see the enormous material

benefit to both arising from the maintenance of some sort of a bond between the two countries which shall preserve their mutually beneficial business relations.

No one can have studied the East without having been made aware that in the development of China, Japan and all Asia, are to be presented the most important political questions for the next century, and that in the pursuit of trade between the Occident and the Orient the having such an outpost as the Philippines, making the United States an Asiatic power for the time, will be of immense benefit to its merchants and its trade. While I have always refrained from making this the chief reason for the retention of the Philippines, because the real reason lies in the obligation of the United States to make this people fit for self-government and then to turn the government over to them, I don't think it improper, in order to secure support for the policy, to state such additional reason. The severe criticism to which the policy of the Government in the Philippines has been subjected by English Colonial statesmen and students, should not hinder our pursuit of it in the slightest. It is of course opposed to the policy usually pursued in the English government in dealing with native races, because in common with other colonial powers, most of England's colonial statesmen have assumed that the safest course was to keep the native peoples ignorant and quiet, and that any education which might furnish a motive for agitation was an interference with the true and proper course of government. Our policy is an experiment, it is true, and it assumes the risk of agitation and sedition which may arise from the overeducation of ambitious politicians or misdirected patriots, in order that the whole body of the people may acquire sufficient intelligence ultimately to exercise governmental control themselves.

Thus far the policy of the Philippines has worked. It has been attacked on the ground that we have gone too fast, that we have given the natives too much power. The meeting of the assembly and the conservative tone of that body thus far disclosed, makes for our view rather than that of our opponents, but had the result been entirely different with the assembly, and had there been a violent outbreak at first in its deliberations and attempts at obstruction, I should not have been in the least discouraged, because ultimately I should have had confidence that the assembly would learn how foolish such exhibitions were and how little good they accomplished for the members of the assembly or the people whom they represented. The fact that this natural tendency was restrained is an indication of the general conservatism of the Filipino people.

Though bearing the name of immediate independistas, the members of the controlling party of the assembly are far from being in favor of a policy which those words strictly construed would mean.

Moreover, the recent election held, since the Assembly was organized, in which fifteen progresista and fifteen nationalista governors were elected, is an indication that the nationalist feeling is by no means so overwhelming as was at first reported when the returns from the election of the assembly were published in the press.

The fact that Filipinos are given an oportunity now to take part in the forming of the governmental policies in the islands, will I hope satisfy many of them that the United States is in earnest in attempting to educate them to self-government, will so occupy their ambitions and minds as to make the contention for immediate independence more of an ideal than of a real issue, will make more permanent and lasting the present satisfactory conditions as to peace and tranquillity in the islands, and will turn their attention toward the development of the prosperity of the islands by improvement of its material conditions and the uplifting of the people by their education, sanitation and general instruction in their political, social and material responsibilities.

There has been in the United States in the last year a recurring disposition on the part of many of the press and many public men to speak of the Philippine policy as if foredoomed to failure, and the condition of the islands as a most deplorable one. No one who knew the islands in 1900, and who has visited them during the present year and especially during the meeting of the assembly can honestly and fairly share such views. To one actually responsible in any degree for the present conditions by reason of taking part in the government of those islands, the changes made and the progress made under the circumstances are most gratifying.

COST OF THE PRESENT GOVERNMENT OF THE ISLANDS.

The most astounding and unfair statements have appeared in the press from time to time and have been uttered by men of political prominence who should know better, in respect to the cost to the United States of the Philippine Islands. The question of the cost of the islands to the United States as affecting its future policy can not of course include the cost of a war into which the United States was forced against its will, and which whether it ought to have been carried on or not, was carried on and was finished more than five years ago. The only question of cost that is relevant to the present discussion is the cost to the United States of the maintenance of the present Philippine government, including in that the cost of the maintenance of that part of the army of the United States which is in the Philippine Islands. Nor is it fair to include the entire cost of the army of the United States in the Philippine Islands for the reason that even if we did not have the Philippines, we should certainly

retain the present size of our standing army which hardly exceeds 60,000 effective men, a very small army for 80,000,000 people. Moreover, it is worthy of note that the greatest increase in the Army of recent years has been in that branch of the service—to wit, the coast artillery—which has not been used in the Philippines for some years.

The only additional cost therefore that the maintenance of the army can be said to entail upon the United States is the additional cost of maintaining 12,000 soldiers in the islands over what it would be to maintain the same number of soldiers in the United States. This has been figured out and roughly stated amounts to about $250 a man or $3,000,000, together with the maintenance of 4,000 Philippine Scouts at a cost of $500 a man, or in all $2,000,000, which makes a total annual expenditure of $5,000,000. The United States at present contributes something, perhaps $200,000, to the expense of the coast survey of the islands. With this exception, there is not one cent expended from the treasury of the United States for the maintenance of the government in the islands. The additional cost of the 12,000 men in the islands, figured above at $250 a man, includes the cost of transportation and the additional cost of food supplies and other matters.

There is an item of cost, which perhaps may be charged to the Philippine Islands. I refer to the expense of fortifying the bay of Manila, the port of Iloilo and the port of Cebu, so that in holding the islands the United States shall not be subject to sudden and capricious attack by any ambitious power. This may reach a total of ten millions. But it is hardly fair to charge this to the Philippine policy; for almost everyone concedes the necessity of maintaining and fortifying coaling stations in the Orient whether we have the Philippines or not.

The question is, therefore, whether, in order to avoid the expenditure of $5,000,000 a year, the United States should pursue the humiliating policy of scuttle, should run away from an obligation which it has assumed to make the Philippines a permanently self-governing community, and should miss an opportunity at the same time of building up a profitable trade and securing a position in the Orient that can not but be of the utmost advantage in obtaining and maintaining its proper proportion of Asiatic and Pacific trade.

From time to time there has been quite severe criticism of the present Philippine government on the ground that it is such an expensive government as to be burdensome to the people. The facts are that the taxes which fall upon the common people are much less than they ever were under the Spanish régime. The taxes which fall upon the wealthy are considerably more, because as a matter of fact the Spanish system of taxation was largely devised for the purpose of avoiding taxation of the wealth of the islands. I have not at hand and am not able to insert in this report the figures and statistics

which demonstrate this fact. They are now being prepared in Manila, and I hope at some future date to submit them for your consideration. Not only is the comparison to be instituted with the conditions existing under the Spanish régime, but also with the taxation of other dependencies. The data with respect to these are difficult to get and frequently liable greatly to mislead when the conditions of each particular colony are not fully understood and stated. But my information is derived from Governor Smith and Mr. Forbes that the cost per capita of the government of the Philippines will compare most favorably with that of colonial governments presenting substantially similar conditions.

The reports from the governor-general, the heads of departments and of bureaus have not reached Washington. I was able before I left the islands to read informal drafts of some of them and much of the information as to the last year's operations I have derived from them. I shall submit the reports immediately upon their arrival.

RECOMMENDATIONS.

I therefore recommend:

First. That legislation be adopted by Congress admitting the products of the Philippine Islands to the markets of the United States, with such reasonable limitations as may remove fear of interference with the tobacco and sugar interests in the United States;

Second. That the present restrictions be removed as to the acquisition of mining claims and the holding of lands by corporations in the Philippines;

Third. That further legislation be passed authorizing the Philippine government, if it chooses, to open and conduct an agricultural bank, with a capital not exceeding $2,000,000; and

Fourth. That the coastwise laws of the United States be made permanently inapplicable to the trade between the ports of the islands and the ports of the United States.

Sincerely, yours, WM. H. TAFT.

THE PRESIDENT.

APPENDIX "A"

NEGOTIATIONS

FOR THE

SETTLEMENT OF TITLE TO CERTAIN LANDS IN THE PHILIPPINE ISLANDS

CLAIMED BY THE PHILIPPINE GOVERNMENT AND BY THE ROMAN CATHOLIC CHURCH

AND IN THE MATTER OF

THE CHARTER OF THE SPANISH-FILIPINO BANK

26720—S. Doc. 200, 60-1——6

LETTER OF SECRETARY OF WAR TO THE PRESIDENT.

WAR DEPARTMENT,
Washington, July 2, 1907.

MY DEAR MR. PRESIDENT: I beg to submit herewith a report upon negotiations which have reached a tentative conclusion between Archbishop Harty, of Manila, and myself, with reference to the settlement of certain controversies between the Philippine government on the one hand and the Catholic Church on the other. With the Catholic Church may be included the Banco Español-Filipino, of which I am informed that the Archbishop of Manila, in his trust capacity for the Roman Catholic Church, is the chief stockholder. The negotiations concern the administration of trust properties of an educational and charitable character, and also the charter of the Filipino-Spanish Bank, especially in respect of a franchise which it was given by the Spanish Government for the issuing of circulating notes.

At the time that I was sent to Rome, by your direction, Secretary Root, in his instructions to me of May 9, 1902, said:

> The rights and obligations remaining under the various specific trusts for education and charity which are now in doubt and controversy ought to be settled by agreement if possible, rather than by the slow and frequently disastrous processes of litigation, so that the beneficent purposes of these foundations may not fail.

And in my letter of July 3, 1902, in response to a communication of Cardinal Rampolla, I said:

> It is hoped that when the apostolic delegate competent to act for the Holy See visits the islands he may take up with the Philippine government the educational and charitable trusts now in dispute, and that they may agree by compromise on those which should be conducted under the direction of the civil government and those which should be conducted under the direction of the church; but should it be impossible to agree upon such a compromise, then it is proposed to submit all the disputed questions of this character to the tribunal of arbitration constituted under the first head, which shall hear the causes as in a court and make the award as above provided, and that among the questions to be submitted to such tribunal shall be the one arising upon the San Jose foundation now pending in the supreme court of the islands.

I am very glad to say that I believe a satisfactory compromise has been reached.

After the cession of sovereignty to the United States under the Treaty of Paris took effect the question arose as to whether the government or the church should act as administrator and trustee of the following trusts:

The College of San Jose.—This is now under the control of the Dominican order and is made a part of the University of St. Thomas. Its foundation includes certain buildings in Manila and an agricultural estate, all of which are valued at about $500,000.

The Hospicio San Jose.—This is now used as a lunatic asylum and also as a pauper school. It is in charge of a board of directors under the Archbishop of Manila. Its foundation is estimated to be worth about $400,000.

The Hospital of San Juan de Dios.—This is administered by a directorate under the supervision of the Archbishop of Manila, and the value of its foundation, including its buildings and a large hacienda, is estimated at $1,000,000.

The Hospital of Cavite.—This is a small hospital in possession of the archbishop of Manila and worth not more than $50,000.

The Hospital of San Lazaro.—This was conducted, until the United States forces took charge of Manila, by the Franciscan monks as a leper hospital. The Franciscan monks surrendered it to the administration of the military government, and it has ever since been in charge of the military government, or of the Philippine civil government, which succeeded. Its property is chiefly, in addition to a large hospital building, urban or suburban property, which has become quite valuable and is estimated now as worth from $1,250,000 to $2,000,000.

First. In respect to the College of San Jose, the controversy early attracted attention under the military government because the Filipino College of Physicians, claiming that this was a civil trust, petitioned General Otis, the military governor, to prevent the continuance of this college and its foundation as a medical school and part of the Dominican University of St. Thomas. General Otis issued an order forbidding the use of the college buildings and property for this purpose, but did not take the property from the custody of the Dominicans or of the Catholic Church. The matter was agitated before the Commission as soon as the Commission reached the islands, and we finally, after hearing arguments on both sides, made special provision for a decision of the controversy by the Supreme Court. We did not intimate our view as to the merits of the controversy, but did hold that General Otis had no right to issue the order which he did issue, and we accordingly set it aside. As a matter of fact, after studying the case, two of the Commissioners—that is, General Wright and myself—reached the conclusion that the civil government had no right to take possession of the College of San Jose, or to administer it, while our three colleagues—Judge Ide and Commissioners Moses and Worcester—differed with us and thought suit should be brought by the civil government to maintain its right as trustee, and, as already said, a special act was passed for an original suit in the supreme court. The case has been argued and the decision has been prepared, but has not been handed down, because, at the request of the parties, it was hoped that it might be included in the general settlement.

In respect to the Hospicio San Jose and the San Juan de Dios Hospital, in 1902 the attorney-general of the Philippine Islands, in opinions which I append, advised the civil governor that the right to administer these trusts was a civil one and was in the civil government. Such examination of these cases as I have been able to give indicates that these trusts were originally religious and pious trusts and pertained to the church, but the position of the attorney-general is that the King of Spain by subsequent decrees freed them of their religious character and took them over to his civil administration.

The claim of the church in all these cases is that under the Government of Spain all charitable and religious foundations were presumptively pious works, *obras pias*, and under the control of the church; that there were two kinds—one under the immediate control of the ordinary or the bishop of the diocese and the other under the control of the King as the universal patron of religious trusts. It was claimed that under two bulls—one of Alexander VI and the other of Julius II—the Popes transferred much of their authority to be exercised by the King of Spain, and especially their power as patrons of religious trusts. Hence, it is contended by the church authorities that all these trusts which had originally a religious foundation pertained to the Roman Catholic Church down to the ending of the Spanish rule in the Philippine Islands, and that even where by royal decree a trust administered by a religious order was taken over by the King because of abuses in its management the religious character of the trust did not cease, but the action of the King, or of the governor-general acting for him, was that as a vice-royal patron really in the name and the authority of the Pope. At the time the Americans entered Manila these two trusts were being managed by directorates containing both ecclesiatics and civilians under appointment of the governor-general. On his retirement he invited, so it is claimed for the church, the archbishop to assume control as religious patron representing the Pope on the withdrawal of the representative of the King of Spain, and the archbishop took control as such.

The question is a most intricate and complicated one, and one upon which, although I have given it some study, I am by no means clear as to the result which would be reached at the end of a long litigation. In opposition to the opinions of the attorney-general upon the question of Hospicio San Jose and the San Juan de Dios Hospital, I append the petition of the Archbishop of Manila to you, which sets out the views of the church authorities upon the right to administer these trusts.

In respect to the Hospital of Cavite, I don't think the civil authorities insist upon their claim of administration.

The trust of the Hospital of San Lazaro was being administered by the monks of St. Francis when the military government of the United States was established. The monks were unable to carry it on and turned it over to the United States military governor. This trust was undoubtedly of religious origin, though whether its subsequent mutations gave it a civil character is a doubtful question. Our claim to administer is not thought to be so strong in this case as in those of Hospicio San Jose and San Juan de Dios. From the standpoint of public usefulness it is much better that the government should control this trust of San Lazaro than any of the others.

The members of the Commission were long ago convinced of the wisdom of ending the litigation, which was likely to be continuous and exasperating, and agreed that if we could secure the administration of the San Lazaro property as a leper hospital and for other diseases we would be entirely willing to allow the other trusts to be administered without question by the Roman Catholic Church. The reason why we were anxious to secure the San Lazaro property was, first, because it was admittedly the most valuable trust of all, and is nearly equal in value to the rest which are in dispute. A majority

of its property is city property, the value of which is rapidly increasing, and the rents from which can be made quite profitable. It was very badly mismanaged when in the hands of the Franciscans, who allowed themselves to be robbed by middlemen, who collected all the profits and paid nothing to them. But under government control it has been made a very wealthy charity. The foundations of the other charities are chiefly agricultural property, and while that is often valuable it is not so certain in its returns, and on the whole not so desirable, whatever its estimated value, as the city property like that of San Lazaro. There is an additional reason why we would desire to retain control of San Lazaro. It is admirably adapted to the construction of hospitals for epidemic diseases and for all the public buildings connected with the sanitary work of the government and the city, and something more than $100,000 in gold has been expended by the Philippine government in improvements on the San Lazaro estate and near the old San Lazaro Hospital. It would be exceedingly inconvenient for the government, therefore, to give up the administration and control of that charity. Accordingly, in the discussion with Monsignor Agius, the apostolic delegate, I renewed a proposition, as Secretary of War, in 1905, which the Commission had made before my visit to the islands in that year, that if the church would consent to our holding and administering the San Lazaro estate, which was in our possession, we would compromise by allowing the church to retain all the other trusts, including the College of San Jose, which was in litigation, and would consent to a decree directing that that be turned over to the control of the Archbishop of Manila for administration, in accordance with the original purposes of the founder. Monsignor Agius was not willing, because of the great value of the San Lazaro property, to make this compromise. When it was proposed by the government to bring suit to recover the San Juan de Dios Hospital property, Archbishop Harty protested by cable to me, and thereupon I telegraphed him a renewal of the offer of compromise which I had made to Monsignor Agius. He did not then accept it. He subsequently visited Rome and obtained permission to make a compromise with respect to these trusts, and then came to America for a conference with me. His proposition of compromise is contained in the petition which I have filed herewith. After much discussion, in which he brought into requisition the services on his behalf of Mr. Festus J. Wade, a banker of wide experience of St. Louis, we agreed upon a tentative settlement, which is appended herewith.

The 50 hectares which is reserved for the archbishop and the church out of the San Lazaro trust property in this compromise is valued, as we learned by cable, at about 5,000 pesos a hectare. It lies north of the valuable part of the estate and embraces swamps and unimproved land. All of it is not worth to exceed 250,000 pesos, or $125,000. So that the part which we receive in the compromise amounts certainly to $1,200,000, and probably to $1,500,000, and we save the money which we have already invested in San Lazaro and secure a most useful public sanitary plant. This tentative settlement was made subject to the approval of the Commission, and the Commission have since signified their acquiescence in the arrangement.

I need not emphasize to you, I am sure, the importance of the settlement of this controversy, even though the church had some advantage in the result. I do not think it has. My own judgment as a lawyer is that it is very doubtful whether we could have established our claim upon appeal to the Supreme Court to the administration of any of these trusts. They are so commingled in their origin with religious charities that I am quite confident that an American court would feel that a purely civil government was not competent to administer them according to the intent of their founders, and I am under the impression that a court would regard that as the chief guide to them in deciding what trustee should be entitled to administer the charity. It may be said that we have no right to divide up the San Lazaro charity—that it ought to go to one or the other party as a whole. I think this objection, however, can be met by the suggestion that we have already put a very large amount of money out of the treasury of the Philippines into that part of the San Lazaro estate which we retain, and that therefore we may properly part with the outlying remainder of the estate of comparatively little value for purposes of peace and to secure the administration of this particular charity of so much benefit to the general public.

There was united with the settlement, however, the settlement of a controversy with respect to the Banco Español-Filipino. I shall not state the question in detail, but may say in a summary way that the bank was established under general Spanish law and then was reorganized under special royal decree and was given the right to have a capital of 3,000,000 pesos, the equivalent of $1,500,000, with an exclusive privilege of issuing notes to the amount of 9,000,000 pesos, to constitute the circulating currency in the islands. When the United States took possession of the Islands, the bank had a capital only of 1,500,000 pesos, with a surplus of 900,000 pesos, and had issued notes to about the amount of 1,500,000 pesos. The Philippine Commission was not willing to permit the exercise by the bank of the franchise to issue notes beyond its capital stock, and therefore imposed a prohibitory tax on the issue of notes beyond its capital stock. This was seriously objected to by the bank, and I may say by the church authorities, because the archbishop of Manila, as I am informed, owns or controls more than one-half of the stock of the bank. It has been vigorously contended, in printed briefs and otherwise, that this charter of the Spanish Kingdom, by virtue of the guaranties of the Treaty of Paris, passed unimpaired under American sovereignty, and that therefore the American Government, and the Philippine government as its agent, are bound to recognize the validity of the treaty and to allow the issue of notes to the extent of three times the capital stock of the bank. I have never been willing to concede that such a franchise as that of issuing currency could pass from one sovereignty to another without express provision. It seems to me that it is of such a sovereign character as to lapse unless especially saved in the deed or treaty of cession so as to remain in force under the new sovereignty. However this may be, the authorities of the bank have threatened litigation by resistance to the tax and otherwise to test the question of their right to enjoy this note-issuing franchise to its full extent. I must repeat that this was an exclusive franchise which forbade the issue of notes by any

other bank and was so exclusive, according to the views of the bank authorities, as to make the issue of silver certificates by the Philippine government a violation of this exclusive franchise. Those of us who have been responsible for the Philippine government have not had the slightest objection to the issuing of notes under a proper bank charter which should give proper security for the redemption of the notes, and, therefore, when the matter was agitated in connection with the settlement of the trust controversies I expressed an entire willingness to consent to an amendment of the charter if that amendment should, in the judgment of the Commission and our financial experts, secure the payment of the notes to be issued. The compromise which we have agreed upon in this respect may be shortly stated as follows:

The amendment takes away any exclusive right on the part of the bank to issue circulating notes, but provides that no other bank shall exercise this privilege unless it has a capital of $1,000,000. It provides that the present bank may increase its capital to 10,000,000 pesos, provided the increase consists in the payment of money into capital in cash to the par value of the stock. It then permits the issuing of notes equal in value to the paid-up capital stock, not exceeding, however, 9,000,000 pesos, the amount which might have been issued under the old charter on a capital of only 3,000,000 pesos.

Under the Spanish charter the Government was allowed to select certain officers and to secure loans without interest, features which gave the bank the character of a government institution. All these features are renounced by the Philippine government, and only the right of rigid examination and investigation at all times by the treasurer and the governor-general, exactly similar to those methods provided by the national banking act, are reserved. The rules for the investment of the assets of the bank are rigidly drawn and amended with a view to the maintenance of all the capital in the form of bankable securities. The right to invest in real estate securities is limited to 20 per centum of the capital. The land and buildings taken as securities must be entirely free from encumbrance and worth double the value of the loan. A reserve of 25 per centum of cash to redeem the circulating notes is always required to be maintained. A tax of one-half per cent on the circulating notes is imposed when those notes are issued against capital. There is a special provision by which 600,000 pesos of circulating notes may be issued upon the deposit of acceptable securities with the treasurer of the islands to that amount. These 600,000 pesos are included within the allowed total of 9,000,000 pesos, but when notes are issued under this provision they are to pay 1 per cent tax.

The statutes of the bank we have carefully gone over, and into the consultation I have called not only General Edwards and Major McIntyre, of the Insular Bureau, but also the treasurer of the islands, Mr. Frank Branagan, who is familiar with banking in the islands, Mr. Conant, the financial expert, and Mr. Kemmerer, a financial expert who was engaged in the islands for over two years and who was bank examiner there, and Professor Jenks, of Cornell, who is very familiar with oriental banking, and they all approve the amendment to the charter and the arrangement under which now this issue of circulating notes is to take place. It is an instance of asset circulation,

and it is an increase of the security over notes, which might have been issued to the extent of 9,000,000 pesos, from 3,000,000 pesos capital, to 9,000,000 pesos capital. The amendment to the charter and the recognition of it as thus amended as valid is exceedingly popular among business circles in Manila, because it is thought it will offer an inducement for the coming in of banking capital which is so badly needed there.

For these reasons I am entirely willing to recommend the amendment to the bank charter as in the interest of the public in Manila, as well as the basis for bringing about the compromise with respect to the trusts, which I have already described and which I am sure will greatly contribute to the peace and prosperity of the islands. I respectfully ask your authority to direct that the tentative agreement already made by me, together with the amendments of the bank statutes, which I have approved, be carried into effect by appropriate legislation and decrees in court.

Very respectfully, WM. H. TAFT,
Secretary of War.

P. S.—I am authorized to say that Ex-Governor-General Ide, who is familiar with the general features of this compromise, fully approves it. The general terms of the compromise have been submitted to the Commission, who have also approved it.

I do not mention in the list of trusts particularly referred to the Colegio Santa Isabela and the Santa Potenciana, because one of these—Santa Isabela—is confessedly clearly a church trust, and Santa Potenciana is confessedly a trust to be administered by the civil government.

Second P. S.—I ought to add, with respect to the amended charter which it is proposed to grant to the Banco Español-Filipino, that an exactly similar Spanish charter was confirmed in toto to the Bank of Porto Rico by an act of Congress, and in that charter the Porto Rican bank was given the authority to issue notes to three times the value of its capital stock, and in the act of confirmation there was no attempt to give any additional security for the redemption of these notes. This would seem to be a precedent abundantly justifying what we are doing in this amended charter.

THE WHITE HOUSE,
July 4, 1907.

Approved. The appropriate action to make the approval effective will forthwith be taken.

THEODORE ROOSEVELT.

TENTATIVE AGREEMENT BETWEEN SECRETARY OF WAR AND ARCHBISHOP HARTY.

This memorandum of agreement, entered into by Archbishop Harty, Archbishop of Manila, representing the Roman Catholic Church in the Philippine Islands, and the Secretary of War, representing the government of the Philippine Islands, is intended to form the basis of a compromise of a number of controversies arising between the Roman Catholic Church and the government of the Philippine Islands, and to end all such controversies.

The controversies arising are as follows:

First. The right of the Roman Catholic Church, on the one hand, and the Philippine government, on the other, to administer certain charitable trusts, and to take possession of, and assume control of, the following estates, to wit:

The buildings, estates, and hospital plant of the Hospicio San Jose.

Second. The buildings, estates, and hospital plant of San Juan de Dios, including all other estates or investments of said hospital of San Juan de Dios.

Third. The Colegio de San Jose, now in litigation in the supreme court of the Philippine Islands, including buildings, hospital plant, or other property of the Colegio de San Jose, and any hospicios, estates, or investments held by it.

Fourth. The hospital of San Jose in Cavite, including the land and buildings thereof in Cavite.

Fifth. The estate, hospital plant, buildings, and investments, or other property of the Colegio Santa Isabela.

Sixth. The buildings, hospital plant, estates, and all other property and investments of the hospital and foundation of San Lazaro.

Seventh. The buildings, plant, foundation, and estates known as the Santa Potenciana.

Also the controversy between the Banco Español-Filipino, in which the archbishop of the diocese of Manila, representing the Roman Catholic Church, represents and controls a majority of the capital stock, presents the issue whether the rights, privileges, and immunities conferred upon the Banco Español-Filipino continue unimpaired under the American sovereignty brought about by the Treaty of Paris, the Philippine government contending that the right to put in circulation notes of issue ceased to be and was dependent thereafter upon any grant of the American or Philippine government. The bank on its part claimed that under the terms of the Treaty of Paris the right to issue such notes continued unimpaired, and that the charter as granted by the Spanish Government continued without impairment under American sovereignty.

Now, therefore, for the purpose of ending all these controversies, the following informal agreement is entered into, to be subject to the approval of the Philippine Commission, and to be carried into effect by the entry of consent decrees, in the proper courts, in such form as to confirm the titles in the persons by this agreement to take the respective properties, and by such legislation of the Philippine Commission as may be necessary to further confirm and put into execution said agreement, and also subject to the approval of the Secretary of War, and of Archbishop Harty, through his agent, Festus J. Wade, of the statutes of the bank as they shall be revised, such revision to contain a restriction on the amount of money to be loaned by the bank on real estate security.

In consideration of the foregoing, and in the manner prescribed herein, the archbishop of the diocese of Manila, for the Roman Catholic Church in the Philippine Islands, is to take possession and hold in absolute title, free from all claims or demands of the Philippine government, the land and property, real, personal, and mixed, set forth and described under sections one, two, three, four, and five hereof, namely: Hospicio San Jose; San Juan de Dios; Colegio de San Jose; Hospital of San Jose in Cavite, and the Colegio Santa Isabela.

It being understood, however, that the College of San Jose is to be surrendered and given into the possession and ownership of the archbishop of Manila for the specific purpose of its foundation.

And to the same extent and in the same manner the archbishop of Manila, for the Roman Catholic Church, relinquishes all claims and demands of any nature and to any extent upon the buildings, plant, foundation, and estates known as Santa Potenciana, and also upon the buildings, hospital, plant, church, estates, and all other property and investments, real, personal, or mixed, of the hospital and foundation of San Lazaro, except as follows:

First. The Archbishop of Manila is to take, hold, and own all of block numbered 156, as platted and set forth upon the map or plat hereto attached and made a part hereof for the purpose of this agreement, said conveyance being in consideration of the relinquishment by the archbishop of Manila of any claim or demand to the church and land upon which it is situated, and which is attached to and a part of the San Lazaro Hospital.

Second. All of the blocks platted and set forth upon the map hereto attached, beginning with block numbered 159 and up to and including block numbered 210, shall be divided as follows:

The Archbishop of Manila, his agent or representative, shall select fifty hectares belonging to the San Lazaro estate north of the second street running parallel to the northern boundary of the present hospital ground, provided there be fifty hectares in this property. The selection shall be made by blocks, platted and numbered from 159 to 210, inclusive, upon the accompanying map or plat. The area of this described property shall be determined in hectares, and if it exceeds fifty hectares the selection shall be as follows:

First. The archbishop or his representative will select a block and then the representative of the Philippine government will select a block, and alternate selections will follow until the archbishop shall

have received fifty hectares of land. If from the survey it is shown that these alternate selections by the archbishop and by the Philippine government will not give to the archbishop the required fifty hectares of land, the Philippine government shall withdraw from further selection as soon as its proportionate amount has been received, and give the balance of the property to the archbishop, it being understood that both the parties hereto agree to the dedication to public use of the streets and alleys shown on said plat or map.

In relation to the Banco Español-Filipino, the following is agreed by and between the parties hereto:

I. That the corporate existence of the Banco Español-Filipino shall be extended twenty-five years from January 1st, 1903. This period may be extended at the request of the majority of the stockholders of the bank, provided such request be made at least one year before the expiration of the twenty-five years mentioned.

II. That the bank is authorized to change its name, at its option, to be known as the Bank of the Philippine Islands, or the Philippine Bank.

III. That the government of the Philippine Islands renounces all rights which it may have derived under Spanish law to appoint the governor and other officers of the bank or to interfere in any way with its administration, except to make examination of its solvency and supervise its conduct in the interest of the public in the same manner as such examination and supervision are or may be exercised over national banks in the United States and as prescribed by the laws of the Philippine Islands.

IV. That upon compliance with the preamble of this agreement, validity is given to all acts heretofore performed by the bank which would otherwise be legal and whose validity might be questioned by reason of the failure of the bank to comply with its statutes in regard to the participation of the government in the management of the bank.

V. That the government of the Philippine Islands renounces all right and title derived from Spanish law and the existing statutes of the bank to a loan of any money to the treasury of the Philippine Islands.

VI. That the treasurer of the Philippine Islands, provincial treasurers, and other authorized public officials shall, from time to time, deposit with the bank and its branches, upon such terms as may be prescribed by the government of the Philippine Islands, such public moneys and trust funds as may be available for this purpose without discrimination against the bank or in favor of other institutions; but this clause shall not bind such officials to make or maintain such deposits when, in their opinion, it is inadvisable.

VII. That the treasurer of the Philippine Islands and all assistant treasurers and provincial and municipal treasurers and other public officials shall be directed to receive the notes of the Banco Español-Filipino for public dues, without discrimination in favor of the notes of other banks or the certificates of the Philippine treasury, so long as said notes are paid in the lawful money of the Philippine Islands or of the United States without discount and on demand at the bank and its branches.

VIII. That the capital stock of the Banco Español-Filipino shall be authorized to an amount not to exceed ten million pesos, and its

circulating notes shall hereafter be issued under the following limitations of amounts and conditions:

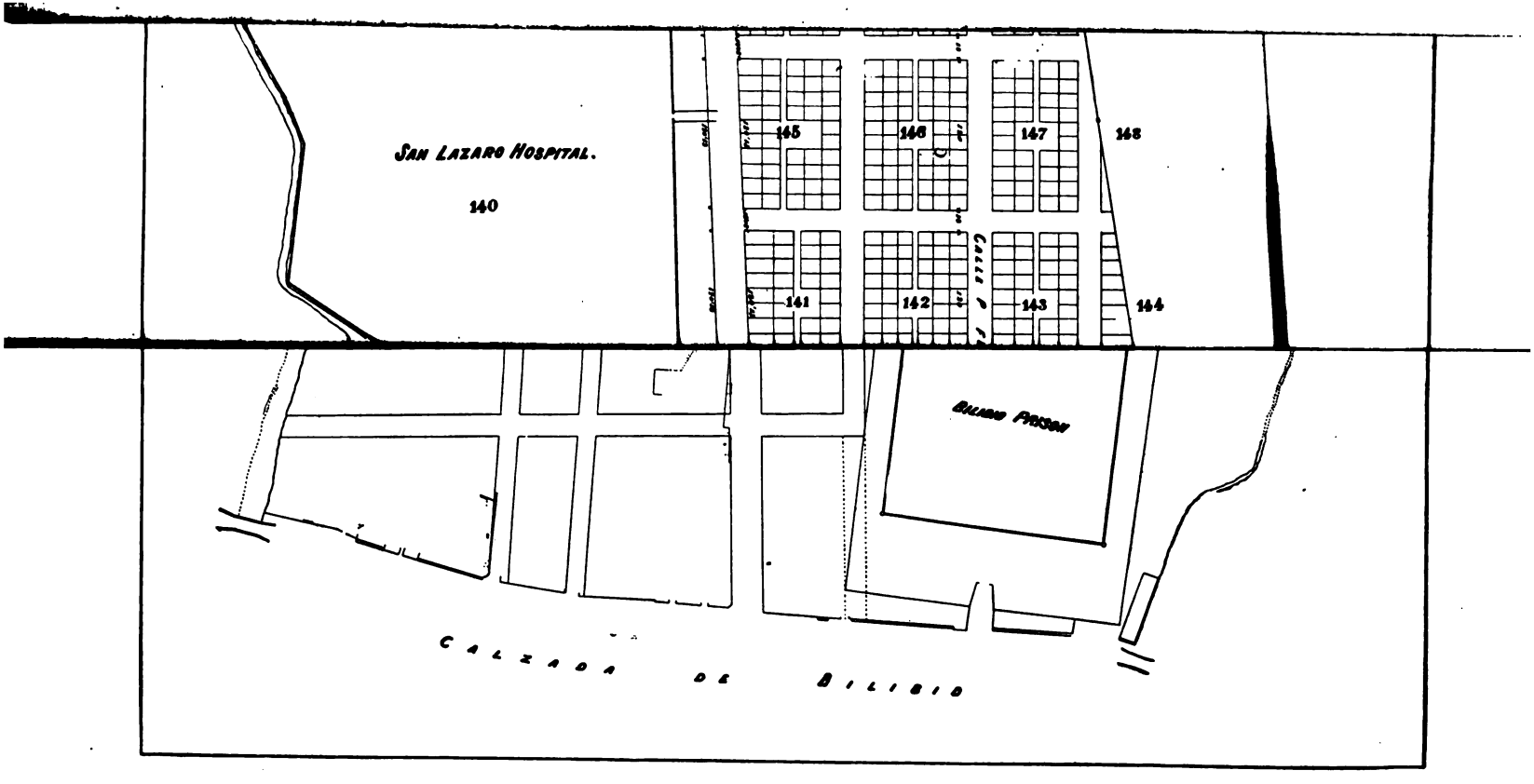
(*a*) To a present amount not exceeding two million four hundred thousand pesos, which shall be secured by the paid up and unimpaired capital of the bank and by the value of the surplus as ascertained by the governor of the Philippine Islands; and in case such capital and surplus shall not, in the opinion of the governor of the Philippine Islands, be equal in value to the amount of circulation herein authorized, then said governor may require a contraction of such circulation until it shall not exceed the value of the capital and surplus of the bank, or the deposit with him of commercial paper conforming to the statutes of the bank and acceptable to him, for any excess in the amount of circulation above the value of the capital and surplus as ascertained and determined by him. And said bank is hereby authorized to issue its circulating notes secured by its capital as herein provided in equal proportion with such increase of paid in capital stock in cash, not exceeding nine million pesos; and all notes so issued shall be governed by the provisions of this section.

(*b*) To a present additional amount not exceeding six hundred thousand pesos upon deposit with the treasurer of the Philippine Islands of bonds of the United States, bonds or certificates of the government of the Philippine Islands, bonds of the city of Manila, stock or bonds of railways or mortgage banks upon which interest or principal has been guaranteed by the government of the Philippine Islands, or other securities acceptable to the treasurer of said Philippine Islands, and the percentage of circulation to be allowed upon the face value or market value of each of said class of securities shall be determined by said treasurer of the Philippine Islands. Such notes may be issued at the discretion of the bank, subject only to the condition that the securities deposited shall be acceptable in character and amount to the treasurer of the Philippine Islands, and without regard to whether issues have been made or applied for under other provisions of this act. And, in case of the increase of the paid up and unimpaired capital of the bank from two million four hundred thousand pesos to three million pesos, the treasurer of the Philippine Islands shall deliver to the bank the securities deposited with him to cover circulating notes under this paragraph (*b*).

It being the intention that the total circulating notes issued under this agreement shall never exceed in amount nine million pesos; secured by at least an equal amount of the paid up and unimpaired capital of the bank; except as hereinbefore provided under paragraph (*b*) of section VIII.

IX. That all outstanding notes of the bank shall, after January 1st, 1908, constitute a preferred lien upon the assets of the bank, except as to such securities as have been specifically deposited under special agreements with public officials for the safe-keeping of public moneys.

X. That the bank renounces all claim to the exclusive privilege of issuing notes in the Philippine Islands or to any other exclusive privilege not set forth in this act; but the government of the Philippine Islands will make no laws or regulations affecting the bank, or imposing charges or taxation upon it, which shall not apply equally to


San Lazaro Hospital.
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148
Calle de
Bilibid Prison
Calzada de Bilibid

ARCHBISHOP HARTY'S PETITION TO THE PRESIDENT.

Mr. PRESIDENT: I am an American, and appreciate the good intentions of my country and the rectitude of those men whom it has sent to the Philippines to, in its name, take possession of and govern these islands. Accustomed as they are to the entire separation of Church and State, under which each administers that which pertains to it with absolute independence of the other, they are unable to understand that the King of Spain or his Governor-General in the Philippines should intervene in private affairs of the Church, nor could they admit that the property of the foundations, in which the Crown to some extent intervened, belonged to the Church. And this reasoning was correct, judging by the legislation of North America; no governing power in South America would concur therein, because none of those countries are unacquainted with the Apostolic Letters issued by Pope Julius II on July 28, 1508, granting to the Kings of Spain, as a reward of their fidelity, and as an incentive to carry on the arduous undertaking of discovering new islands and extending over them Christianity, the right of Patronate in all the countries already or to be discovered, that is, *the right to indicate fitting persons for appointment to any churches whatever*, exercising this right over the churches and all pious institutions;—nor are the Spanish laws decreed by virtue of this concession and which are contained in the "Digest of the Laws of the Indies," unknown in those countries. And that is the reason for the extensive intervention which the Kings of Spain and their Viceroys in Spanish America, as well as their Governors-General in these Islands exercised in ecclesiastical matters the Viceroys and Governors-General exercised in the King's name the Viceroyal Patronate, and it was thus expressed in their official communications relating to the matters of the Church, for the dispatch of whose business they had a special office, and the King exercised the Patronate in the name of the Pope, who was the grantor thereof. But the Patronate does not signify the "property" of the Church, nor the ownership of the properties of the foundations over which it is exercised, but only the right granted in the concession; the ownership pertains to the Catholic Church, and if on account of any event whatever the Patronate ceases, as in the present case, the privilege granted reverts to the Church, and all things comprised in the grant become again under the jurisdiction of and are governed by the common ecclesiastical law.

The Patronate does not only represent an honor to be received, or a privilege to be exercised; it also represents duties to be fulfilled, because the Patron is obliged to contribute a portion for the construction of Churches, and to assist the hospitals and other founda-

tions over which he exercises the Patronate; the Spanish Government further paid a pension to all ecclesiasts who held office in the cathedrals and parishes, and also the amount necessary for the support of the Catholic worship: The Insular Government does not desire these honors and privileges, and is unwilling to give anything for the Church, because the American Constitution forbids; but on the other hand it asks what no Patron has ever asked because he had no right thereto—ownership of the pious foundations.

The last Spanish Governor-General well understood the doctrine just expressed, and upon the termination of Spanish sovereignty in the Islands, by virtue of the Treaty of Paris, directed a communication to my predecessor, the Most Reverend B. Nozaleda, then Archbishop of Manila, informing him that Spanish sovereignty in this Archipelago and the exercise therein of the Royal Patronate were about to cease; wherefore he furnished him this information so that he, as Prelate, might take charge of the foundations and Pious Works which pertained to the Royal Patronate.

COLLEGE OF SAN JOSÉ.

D. Esteban Rodriguez de Figueroa, a Spaniard who had been Governor of Mindanao, by a will executed in 1596 ordered a house to be built next to that of the Company of Jesus in the City of Manila which should serve as a Seminary for boys; to which end he left property, intrusting to the Father Provincial of the Company of Jesus of said City the Patronate and administration of said College. In August, 1601, the Vicar-General, through the Ecclesiastical Chapter, the See being vacant, granted to Father Luis Gomez, who had been appointed Rector of the College of San José by the Company of Jesus, a license to found said College "where the youth may be educated and instructed in good manners and letters, and ministers for the Holy Gospel reared," the Governor-General, in the name of the King, issuing on the same day his license for its foundation.

On May 3, 1722, at the request of the Procurator General of the Company of Jesus, Philippines Province, the King of Spain received the College under his Royal Protection, and granted the title Royal ad honorem "without burden to my Royal Treasury" to the Seminary of Grammatical, Philosophical and Theological studies, known as San José, founded by D. Esteban Rodriguez de Figueroa, on account of the great progress which the said College has made and is making in virtue and letters, and the many learned men who have come from it.

The Company of Jesus having been suppressed in the Philippines in the year 1768, the College of San José remained under the Royal Protection, and by Royal Order of March 21, 1771, it was ordered that its Rector be appointed from those of good conduct who had been students thereof, which appointment ordinarily fell to a capitulary of the Cathedral.

The College thus continued till the year 1875, when the King of Spain, exceeding, according to my understanding, the faculties which he possessed as Patron, ordered its income dedicated to the support of the faculties of Medicine and Pharmacy which he at the same time ordered established in the College, whose administration should be under the care of a Director appointed by the Vice-Royal Patronate; the College has continued till to-day in that manner.

HOSPITAL OF SAN JUAN DE DIOS.

The Hospital of San Juan de Dios was founded in the year 1596 by the Brotherhood of the House of Misericordia established in Manila with the approval of the Ordinary, that the sick servants of Spaniards, Peninsula Spaniards and Mestizos might be cured therein. At that time there already existed in Manila the Hospital of San Gabriel, for Chinese, founded by an Archbishop; that for natives, which dates from the first days of the evangelization of these islands and, thanks to the charity of the first Bishop of Manila, intrusted to the Franciscan Fathers; and the Military Hospital, founded by the Government with the name of Royal Hospital.

The above classification is necessary because the Hospital of San Juan de Dios, formerly known as the Hospital of the Misericordia, on account of its origin, has been frequently and is still sometimes confounded with that of the Franciscan Fathers; as some people likewise confound this charitable institution with the Royal Hospital, which error arises from the mistaken idea that the Government was the founder of the Hospital of San Juan de Dios.

The work of the Hospital of the Misericordia (to-day San Juan de Dios) developed slowly, commensurate with the amounts it received from pious persons and the gifts worthily made to it. In this work the Misericordia was never assisted by the Government, and the latter never exercised any control over it, direct or indirect.

The Brotherhood of the Misericordia administered its Hospital as its own property, and was never at any time molested in the peaceful possession thereof or the free exercise of its government and administration as the owner and sole founder of that institution of charity.

So certain and strong was its right, that the King, by Royal Decree of December 5, 1659, issued with the object of authorizing the transfer of this Hospital to the Hospitalary Order of San Juan de Dios, makes known that the Patronate of this Hospital belongs to the Brotherhood of Misericordia.

On May 31, 1656, the Brotherhood of Misericordia made an irrevocable gift of its hospital to the Order of San Juan de Dios by a public writing before the Notary, D. Tomás de Palenzuela y Zurbarán, together with all the properties pertaining to it, but reserving the right of Patronate over the Hospital.

The Order of San Juan de Dios changed the name of the institution to that of their Holy Founder, and administered it independent of the civil authorities and of the Royal Patronate till the year 1865, when, for lack of proper personnel and other reasons which are not germane to the case, they ceased administering the said Hospital in conformity with the Royal Order of August 17th of that year, at which time the Spanish Government first invoked the privilege of its Patronate.

A board, composed of gentlemen of the city of Manila, was designated by the new Patron to administer the Hospital of San Juan de Dios.

Upon the change of sovereignty over these Islands the Board of Directors delivered the said Hospital and all its properties to the Archbishop of Manila, who exercises thereover the Patronate by his own right, as Prelate of this Diocese, now that the privilege of Royal Patronate has ceased.

HOSPITAL OF SAN LAZARO.

The Hospital of San Lazaro was founded inside the old City of Manila by a Franciscan lay brother in the year 1578. In March, 1583, this Hospital was entirely destroyed in the great fire which consumed nearly the whole City.

The first Bishop of Manila, D. Domingo de Salazar, built at his own expense a new hospital within the said City for the poor natives, and constructing a special department for lepers, intrusting its administration to the Franciscan Fathers. In 1603 this Hospital was again destroyed by fire.

The Franciscan Fathers bought sufficient land to erect a new hospital for lepers between the old town of Dilao and Malosac, and there established it.

Governor Corcuera attempted to exercise undue authority by reason of the Vice-Royal Patronate over this Hospital, and the Franciscans protesting against his decision, besought the King, who disapproved the measures taken by Corcuera in his Royal Decree in the year 1641.

In 1662, by reason of the preparation of defenses of the City of Manila, during the Governorship of General Manrique, the building of this Hospital was destroyed. Later another building was constructed between the old town of Dilao and Balete.

By the Royal Order of April 2, 1767, the Jesuit Fathers were expelled from the Spanish domain, and the Treasury took over all their properties. The said Treasury wrongly considered that the property of San Lazaro, known as Mayhaligue, was private property of the Company of Jesus, omitting to take into account that it was an ecclesiastical benefice, and that if the Jesuits enjoyed the fruits thereof it was in their capacity of parish priests of Santa Cruz. The Government in the Philippines persisted in this error, and it may be that, the origin of the property being known to it, it wished to make amends for the wrong done, and the Vice-Royal Patron, Señor Basco, granted to the Franciscan Fathers that which had formerly been used for the support of the Cult, that is, the hacienda of Mayhaligue.

The concession to the Hospital of San Lazaro of the lands of Mayhaligue took place in 1783, in compensation for the damage caused by having to abandon the Hospital in Balete under military orders. The King approved this transfer in 1784.

The Franciscans took possession of the new house in 1785, and of the Hacienda in the year 1786.

The Hacienda of Mayhaligue, to-day known as San Lazaro, and which constitutes part of the property of the Hospital of that name, was originally an ecclesiastical benefice belonging to the Parish of Quiapo, to which Parish said Hacienda had belonged since its creation, its products serving for the proper maintenance of said parish.

In this Hacienda there were a large number of Chinese settlements, similar to those in the old Parian, whose evangelization was in charge of the Dominican Fathers of San Gabriel.

To procure the more rapid conversion of the Chinese of Mayhaligue to Christianity, the Jesuit Fathers asked of the ecclesiastical authorities the division of the parish of Santa Cruz, in Manila, adjoining the parish of Quiapo, to establish there a new parish independent of the Mother Church, to include all the lands of Mayha-

ligue. The Bishop of Cebú, Ecclesiastical Governor of Manila, Father Pedro de Arce, on June 20, 1619, without complying with the requisites of law, and without taking into account that the See of Manila was then vacant, transferred the lands of Mayhalígue to the Company of Jesus. The Cathedral Guild protested against this transfer, and for five years the Jesuits did not make use of such illegal cession.

An account of this was given to the King, as Patron of the Churches of Asia, and by his Royal Decree of November 8th, 1645, he declared illegal and void the grant of the division of Santa Cruz, as well as others which had been made to the Jesuit Fathers.

During the time of D. Hernando Guerrero the grant of the division of Santa Cruz Parish to the Jesuit Fathers was again discussed, and this Archbishop declared null and of no effect the said division, ordering at the same that the Doctrine of Santa Cruz, together with its properties, be returned to the Parish Church of Quiapo.

Later, and on account of the differences which this same Archbishop had with Governor Corcuera on account of his defense of the diocesan authority and the rights of the Church, said Governor exiled the Archbishop to Mariveles. The Guild and the Religious Orders asked the Governor to raise the exile of the Archbishop, and the said Governor, in acceding to their request, laid down certain conditions, one of which was to the effect that the Archbishop must again grant to the Jesuit Fathers the division of Santa Cruz Parish. The Prelate refused to accede to this, but in view of the need which the Church had of a Pastor, he gave in against his will and through force majeur.

On the 13th of August, 1898, upon the surrender of the City of Manila, the Franciscan Father in charge of the Hospital withdrew to the Convent in Manila so as not to fall a prisoner in the hands of the insurrectos, who entered Manila from that quarter. Every day thereafter he sent from the Convent the necessaries for the support of those in the Hospital. As the Hospital was situated at a point controlled by the insurrectos, the Provincial of the Franciscan Order informed the American Commanding General that he could not administer it unless he were furnished soldiers for protection. The General did not furnish the protection asked for, but took possession of said Hospital and its properties, and up to the present neither the Military Government nor the Civil which succeeded it have returned the administration of the Hospital to its legal owners and administrators.

HOSPICIO OF SAN JOSE.

The foundation of the Asylum (Hospicio) of San Jose dates from the year 1782, and is due principally to D. Francisco Gomez Enriquez, a Peninsular Spaniard, and to his wife, Da. Barbara Verzosa, who dedicated to this benefice, the former $4,941, and the latter a credit of $24,000 and odd pesos, as well as an urban property, to the end that by putting this capital into the Acapulco commerce it would produce enough to maintain the pious work of its institution.

The trustee of the founders, using the powers conferred upon him, placed the Hospicio under the protection of the Archbishop of Manila, as " father of the poor ". (the words are textual), and it was put in charge of the Administrator of the Obras Pias of the Mitra.

The Spanish Colonel D. Felipe Cerain dedicated to the Hospital more than $31,000 in the year 1806.

The Archbishop of Manila, in view of the fact that the Hospicio was a true pious work and desiring to aid it, donated thereto large sums accruing from various other pious works.

This beneficent institution, destined to shelter poor beggars of all classes and ages who were without means of support, was not really begun till the year 1809.

The construction of the Hospicio was carried on with private funds and without any assistance whatever from the Government.

The Hospicio bought with its own funds from the Spanish Government a house, in which the institution was installed.

There had existed from the creation of the Hospicio, for purposes of administration and government, a Board composed originally of the Governor-General, in his capacity of Vice-Royal Patron, President, two dignitaries of the Cathedral chapter and other persons of the community, none of whom exercised his functions as a State official, and whose services were always honorary and gratuitous. Later the Presidency fell to the President of the Supreme Court, and some years thereafter to the Provincial of the Augustinian Order; at the present time the office is filled by a dignitary of the Cathedral.

The appointment of the gentlemen composing the Board of the Hospicio were made by the Governor-General, as Protector and in his capacity as Vice-Royal Patron, and he never exercised this prerogative as Civil Superior Chief.

The acquisition of the property which the Hospicio had formerly purchased of it appearing desirable to the Insular Spanish Government, for the purpose of installing a cigar factory therein, the Government asked that it be sold back to it, which was done.

The loss of the American Colonies to Spain occasioned a considerable diminution of the capital of the Hospicio, wherefore the Spanish Government, as compensation for the benefits derived from the Institution, granted it various credits from the extinguished Meztizo Battalion, some of which were very difficult of collection, and also 1,000 pesos yearly from the Community Funds, together with 1½ per cent cereal tax. The appropriation of the thousand pesos yearly was very shortly suspended. The Community Funds were for the greater part composed of the funds known as the Sanctorum,—the proceeds of the special assignments for the support of the Cult and Clergy.

The present building of the Hospicio of San Jose was constructed in the year 1880 with private funds of the Hospital, upon land belonging to the Hospital of San Juan de Dios known as the Island of Convalescence, and which was acquired by the Hospicio in exchange for a certain loan to the Hospital of San Juan de Dios.

The Board of the Hospicio, upon the change of sovereignty in these Islands, considering the Hospicio of San Jose a pious work (*obra pia*), as it had always been considered, made formal delivery of said Institution, together with all its properties, to the Archbishop of Manila, and from that time on the said Archbishop is the only one who appoints the personnel necessary for the management and administration of the Hospicio, in his capacity of Protector thereof.

VALUATION OF THE FOUR FOUNDATIONS.

COLLEGE OF SAN JOSE.

The value of the building, with all its furniture and fixtures, and its two haciendas of Lian (Batangas) and San Pedro de Tunasan (La Laguna), is calculated to be five hundred and forty-seven thousand dollars and fifty cents United States currency ($547,000.50).

SAN JUAN DE DIOS HOSPITAL.

The value of the building, with its furniture and fixtures, and its hacienda of Buenavista, is calculated to be one million one hundred and four thousand dollars, United States currency ($1,104,000).

SAN LAZARO HOSPITAL.

The value of the buildings and its hacienda is calculated to be two million dollars, United States currency ($2,000,000).

HOSPICIO OF SAN JOSE.

The value of the building with all its furniture and fixtures, and the house belonging to the Hospicio on Calle Rosario is calculated to be four hundred and fifty thousand dollars and fifty cents, United States currency ($450,000.50).

There are, besides, other pious foundations, such as the Hospital of San José of Cavite, the Misericordia, in which are comprised the College of Santa Isabel and Santa Potenciana, and some others of minor importance, as for instance, Capellanías (chaplaincies), which serve for ordinations. I will say and affirm with respect to all the Pious Foundations in this Diocese that they are ecclesiastical and not civil; that the State, has never intervened in them, that is to say, as a civil entity, except the King of Spain as Patron in the name of the Pope, or the Governor-General as Vice-Royal Patron, in name of the King, as I have hereinbefore set forth.

The right, then, to these foundations is exclusively of the Catholic Church, as is recognized by the prominent jurists, and I am confident that the courts of justice will support my right if these questions are carried thereto. I concur, notwithstanding, in the fear which Mr. Taft expresses as to the litigation being long drawn out; this however, will not be due to the legal difficulties involved therein, but to the inexplicable delays which occur, as is now the case in the San José College suit—now pending about six years without a decision being rendered—which is not a very favorable indorsement of the prompt administration of justice in the Philippine Islands.

In order to avoid litigation the worthy Secretary of War suggests that a compromise might be made whereby all these questions could be adjusted, the Government retaining the Foundation to San Lazaro and abandoning all claim of right and power to administer the other Foundations. That is to say, we are asked to make an absolute cession of the Hospital and Hacienda of San Lazaro, which, while not the largest, is the most important and valuable.

I could not accept a compromise in this form, because I consider it to be ruinous, notwithstanding, I am disposed to enter, not into a transaction, which in my judgment is not in order because there are

no doubtful rights involved, but into an agreement, the basis of which might be any of the following:

First. The Catholic Church will cede to the Insular Government the Hacienda of Mayhaligue, to-day called San Lazaro, reserving to itself the lands and buildings situated within the walls which surround the same, and also the land comprised within the following limits: Bounded on the South by Calzada de Bilibid; on the East by Calle Cervantes; on the West by an Estero; and on the North by the said walls of San Lazaro. This land contains approximately 50 hectares, and the entire Hacienda, according to the latest plans, contains 161 hectares.

If this proposition is not accepted, it is proposed that—

Second. The Catholic Church will cede to the Insular Government the Hacienda of Mayhaligue, reserving to herself the Church Edifice or Temple contiguous to the Hospital, the 50 hectares comprised within the limits expressed in the above basis, and also the land comprised between Calles Oroquieta and Cervantes to the East and West and Calles Bilibid and Quiricada to the South and North,—7 hectares approximately in extent.

If this basis be not accepted, it is suggested that—

Third. That is, divide the Hacienda into two equal parts, one of the Catholic Church and the other for the Government; or failing this, to give to the Church in money the value of the half, as per assessment.

The Archbishop of Manila has a right to this Hacienda.

And to prove that this is so, and that neither the State nor the Municipality has any right of ownership over the land of this Hacienda, I need not go into any long reasoning; I will present only one proof, but it is irresistible: THE SPANISH GOVERNMENT BOUGHT OF AND PAID TO THE CHURCH, THE AMOUNT OF THE VALUE OF LAND NECESSARY TO CONSTRUCT BILIBID PRISON, SITUATED ON THE SOUTHEAST CORNER OF SAID HACIENDA, AS MAY BE SEEN BY THE CERTIFICATE ISSUED BY THE CHIEF OF THE BUREAU OF ARCHIVES OF THESE ISLANDS, AND THE PLAN THEREOF, WHICH DOCUMENTS I SEND HEREWITH.

NO ONE BUYS THAT WHICH IS HIS.

I trust, that one of these propositions will be accepted. If it be desired that the Church expand, work and exercise her good influence for the morality, well-being, and tranquillity of the people, she must not be deprived of the elements necessary for sustaining life; as in the end, whatever she receives and has, is but to use and spend for the benefit of the people itself, whose betterment and happiness form her constant aspiration.

And if, after the terrible devastation wrought by the war and insurrection, and the enormous losses incident thereto which the Church in the Philippines has suffered in its material interests, she is to be asked to cede all the Hacienda of San Lazaro, it would be as well to ask her to seclude herself within the walls of her almost ruined Temples and to renounce the work which constitutes her life.

JEREMIAH J. HARTY,
Archbishop of Manila.

To His Excellency, THEODORE ROOSEVELT,
President United States.

PROPOSALS MADE BY ARCHBISHOP HARTY TO THE SECRETARY OF WAR.

WASHINGTON, D. C., *March 1, 1907.*

DEAR MR. TAFT: I have the honor to submit the following propositions tending toward a speedy adjustment in the matter of the San Lazaro estate, Manila, P. I.:

First. The Catholic Church will cede to the insular government the hacienda of Mayhaligue, to-day called San Lazaro, reserving to itself the lands and buildings situated within the walls which surround the same, and also the land comprised within the following limits: Bounded on the south by Calzada de Bilibid; on the east by Calle Cervantes; on the west by an estero, and on the north by the said walls of San Lazaro. This land contains approximately 50 hectares, and the entire hacienda, acording to the latest plans, contains 161 hectares.

If this proposition be not accepted, it is proposed that—

Second. The Catholic Church will cede to the insular government the hacienda of Mayhaligue, reserving to herself the church edifice or temple contiguous to the hospital, the 50 hectares comprised within the limits expressed in the above basis, and also the land comprised between Calles Orquieta and Cervantes to the east and west, and Calles Bilibid and Quiricada to the south and north, 7 hectares, approximately, in extent.

If this basis be not accepted, it is suggested that—

Third. That is, divide the hacienda. And to prove that this is true, and that neither the State nor the municipality has any right of ownership over the land of this hacienda, I need not go into any long reasoning. I will present only one proof, but it is irresistible: THE SPANISH GOVERNMENT BOUGHT OF AND PAID TO THE CHURCH, THE AMOUNT OF THE VALUE OF LAND NECESSARY TO CONSTRUCT BILIBID PRISON, SITUATED AT THE SOUTHEAST CORNER OF SAID HACIENDA, AS MAY BE SEEN BY THE CERTIFICATE ISSUED BY THE CHIEF OF THE BUREAU OF ARCHIVES OF THESE ISLANDS, AND THE PLAN THEREOF, WHICH DOCUMENTS I SEND HEREWITH.

NO ONE BUYS THAT WHICH IS HIS.

I trust that one of these propositions will be accepted. If it be desired that the church expand, work, and exercise her good influence for the morality, well-being, and tranquillity of the people, she must not be deprived of the elements necessary for sustaining life; as, in the end, whatever she receives and has is but to use and spend for the benefit of the people itself, whose betterment and happiness form her constant aspiration.

And if, after the terrible devastation wrought by the war and insurrection, and the enormous losses incident thereto which the church in the Philippines has suffered in its material interests, she is to be asked to cede all the hacienda of San Lazaro, it would be as well to ask her to seclude herself within the walls of her almost ruined temples and to renounce the work which constitutes her life.

JEREMIAH J. HARTY,
Archbishop of Manila.

To His Excellency the Hon. WM. H. TAFT,
Secretary of War.

Should you accept any of the above-mentioned propositions, I wish it to be understood that the Government will withdraw all claims to the title of the properties known as the College of St. Joseph, the Hospice of St. Joseph, the College of St. Isabel, the Hospital of St. John of God, in Manila, and the Hospital of St. Joseph, in Cavite, with the properties belonging to them.

J. J. HARTY,
Archbishop of Manila.

DECISION OF THE PHILIPPINE COMMISSION IN THE SAN JOSÉ COLLEGE CASE.

BEFORE THE UNITED STATES PHILIPPINE COMMISSION.

T. H. Pardo de Tavera and others, for themselves and other inhabitants of the Philippine Islands, *against* the rector of the University of St. Thomas, a Dominican monk, and the Holy Roman Apostolic Catholic Church, represented by the most reverend the archbishop of Manila, and the most reverend the archbishop of New Orleans, apostolic delegate.

(Conclusions announced by the Commission.)

In the instructions given by the President of the United States to the Secretary of War for the guidance of the United States Philippine Commission was the following direction:

> It will be the duty of the Commission to make a thorough investigation into the titles of the large tracts of land held or claimed by individuals or by religious orders; into the justice of the claims and complaints made against such landholders by the people of the island, or any part of the people, and to seek by wise and peaceable measures a just settlement of the controversies and redress of the wrongs which have caused strife and bloodshed in the past. In the performance of this duty the Commission is enjoined to see that no injustice is done; to have regard for substantial right and equity, disregarding technicalities as far as substantial right permits, and to observe the following rules:
>
> That the provision of the Treaty of Paris, pledging the United States to the protection of all rights of property in the islands, and as well the principle of our own Government, which prohibits the taking of private property without due process of law, shall not be violated; that the welfare of the people of the islands, which should be a paramount consideration, shall be attained consistently with this rule of property right; that if it becomes necessary for the public interest of the people of the island to dispose of claims to property, which the Commission finds to be not lawfully acquired and held, disposition shall be made thereof by due legal procedure, in which there shall be full opportunity for fair and impartial hearing and judgment; that if the same public interests require the extinguishment of property rights lawfully acquired and held, due compensation shall be made out of the public treasury therefor; that no form of religion and no minister of religion shall be forced upon any community or upon any citizen of the island; that upon the other hand no minister of religion shall be interfered with or molested in following his calling; and that the separation between state and church shall be real, entire, and absolute.

Soon after the Commission reached Manila it was consulted by General MacArthur, the military governor, as to the proper course for him to take on the petition of the rector of the University of St. Thomas, asking him to revoke an order made by his predecessor, General Otis, in 1899, which forbade the rector of the University of St. Thomas to continue to maintain a school of medicine and pharmacy in the buildings of the College of San José, and to use its name and income for that purpose. The order of General Otis had been made at the instance of the president and directors of the Philippine

Medical Association, who claimed that the foundation of the College of San José had been completely under the control and administration of the Spanish Government as a public institution, and passed by virtue of the treaty of Paris to the United States Government, and that though the Spanish Government had permitted the college to be administered for it by the Dominican order, the United States Government, in which there is a complete separation of church and state, should maintain the administration of a school, with purposes so entirely secular as that of the teaching of medicine, free from sectarian and monastic influences. General Otis's order did not take away from the control of the rector of the university the property of the College of San José, but merely forbade the opening of the college as a school of medicine and pharmacy. The property of the foundation, therefore, is still in the possession and under the control of the rector of the University of St. Thomas, except that he is prevented by the terms of the order from opening a college of medicine and pharmacy therein.

The corporation of the College of San José owns two large haciendas. The issue here presented involves the question of the control of that property. Under the instructions of the President, the Commission deemed it its duty to investigate the issue involved and to bring it to a legal settlement. It so advised the military governor and suggested that he delay action upon the petition of the rector of the University of St. Thomas until the investigation could be had, and that meantime the college might be opened under the joint control of representatives to be appointed by each party. Joint control was unsatisfactory to both parties, and the military governor therefore decided not to change the status quo under the order of General Otis until the Commission should conclude its hearing and express to him its view of the proper action to be taken on the petition of the rector of the university. The hearing of the case was begun in July and continued from time to time until October. Dr. T. H. Pardo de Tavera appeared as the party complainant, representing the Philippine Medical Association and those of the Philippine people interested in secularizing the control of the College of San José. The Most Rev. Fr. Bernardino Nozaleda de Villa, Archbishop of Manila, and the Most Rev. P. L. Chapelle, Archbishop of New Orleans and apostolic delegate, appeared in behalf of the Holy Apostolic Roman Catholic Church and asked that it be substituted as a party to the issue instead of the rector of the University of St. Thomas, on the ground that the rector only represented the church in his control of the college. The archbishops were permitted to appear in this representative capacity and to defend against the prayer of complainants.

The pressing engagements of the Commission in other matters prevented a speedier hearing, and have delayed the announcement of its conclusions until now.

The questions in the case are these:

Did the Government of the United States, as claimed by the complainants, acquire by the treaty of Paris the right and power to provide for the control and management of the foundation and properties of the College of San José, as an institution under the secular and civil control of Spain in the Philippine Islands, so that the United States should now by law give to the college a directory, nonsectarian

in character, to maintain and conduct it as a school of medicine and pharmacy? Or—as claimed on behalf of the Catholic Church—have the foundation and properties of the College of San José, under the canonical law and the civil law of Spain, always been subject to the ultimate control of the church for sectarian charitable purposes—a control exercised by the King of Spain only by virtue of a concordat between him and the Pope, as head of the Catholic Church.

It is indispensable to a proper discussion of these questions that the history of the College of San José, as shown by the evidence and documents before us, should be stated. It was agreed between the parties that, for the convenience of themselves and the Commission, a statement of the facts, made by Lieutenant-Colonel Crowder, military secretary, in a report concerning the status of the college, to the military governor, should be taken as accurate, but that it might be supplemented by additional documents and evidence to be produced by either party. Additional documents have been produced by the parties and we do not understand that the authenticity of any of the documents adduced on either side has been denied. With the record of the case thus fixed, we proceed now to state, as succinctly as may be, the history of the College of San José.

On the 8th of June, 1585, the King of Spain, upon information that the fathers of the Society of Jesus had done much good work in teaching in the islands, and that their retention and increase was desirable, and that they should be assisted by the establishment of a college, commanded the governor and the bishop of the islands to report to him how the college could be instituted and the necessities of the Jesuit Fathers provided for. In 1601, on the 25th day of August, the provisor and vicar-general of the Archbishopric of Manila, upon the application of the Jesuit Father, Louis Gomez, granted permission to the petitioner and his order to found and establish the College of San José for the purpose of bringing up young people of the city of Manila and rearing them according to good manners and learning and of creating such ministers of the Holy Gospel as might be needed in the land and to perform masses in the college. Upon the same day the governor and captain-general of the Philippines in the name of the King of Spain granted a similar license to the same applicant. How far the Jesuit Fathers were successful in establishing a college for the purposes mentioned between 1601 and 1608 does not appear very clearly. Certain it is that a school was opened called San José, but there appears to have been no property foundation of any kind until after 1605. In the month of March, 1596, Rodriguez de Figueroa, then governor of Mindanao, made the following will:

In the name of God. Amen. Know all whom this will may see that I, Esteban Rodriguez de Figueroa, governor and captain-general of Mindanao and of its district, now a resident of the village of Arevalo, legitimate son of Duarte Rodriguez de Figueroa and Da. Isabel Gonzales, my parents, formerly residents of the city of Jerez de la Frontera, in the Kingdom of Castile, being in good bodily health and in my natural understanding and memory, such as pleased our Lord to give me, and believing, as I truly and firmly believe, in the Most Holy Trinity, Father, Son, and Holy Ghost, three persons, and only one true God, who lives and reigns, without beginning and without end. And taking as I do the Holy Virgin Mary as my lady and advocate in all my actions, and desiring to place my soul in course of salvation, and naturally fearing death, I execute, acknowledged by these presents, and order this my last and ultimate will, in the manner and form as follows:

And so that God, our Lord, should not allow any of my said children to die before they become of age, competent to make a will, I, as their father and legal administrator, am competent to make a will for them in such case, and by virtue of said power, I order and command that if the aforementioned happens, their mother, Ana de Oseguera, if surviving, inherit the estate of the deceased and of both, the third and the remainder of the fifth being devoted to what is hereinafter declared, and if said D. Ana de Oseguera and my said children, or either of them, die without leaving heirs in the decending line, then, in such case, their estate and their legal paternal or maternal portion, together with the rents and profits therefrom, shall be devoted to the foundation of a college in the manner hereinafter stated, the same being done, if said Da. Ana de Oseguera survives, with the third and remaining fifth; in either one or the other event, a house must be constructed near the Society of Jesus of Manila, sufficient to serve as a college and seminary for boys, where all those be admitted who should desire to enter the primary classes of said seminary; I pray and request whoever may be the provincial of said society to furnish such boys with sufficient teachers for that purpose, the remaining part of said building, not used for that purpose, to be rented for the purpose of maintaining such children and boys; the said father provincial to be the patron and administrator of said college, and no one can enter therein without his permission and authority; to visit and to correct and arrange all of its things, to order said sale, buy the possession and the building, and to appoint a collecting agent and other officials and ministers with the power and authority necessary to such ministry, without said college, nor any judge, nor any secular nor ecclesiastical administration of justice taking part therein, notwithstanding any pretentions that may be advanced. And if any rent remains after payment of maintenance for said boys and of clothing for those who are poor, the said patron may dispose of it at his will for the benefit of said college and of the society or of any other pious work, as he may deem best, without at any time asking or taking any account therefor from him, for any cause or reason.

I revoke, annul, and declare as of no value and effect any will, order, or codicil which I may heretofore have made, so that they be of no value except this one, which I desire to be valid as my last and ultimate will, in the course and form which is proper under the law.

In testimony of which I have executed it and signed it with my name at the village of Arevalo on the sixteenth day of the month of March, 1596.

In 1605, after the death of Governor Figueroa, the event happened which fulfilled the condition of the gift of the testator to found a college. Part of the funds or property which thus became available were in the City of Mexico, and in order to obtain them it became necessary to apply to the King of Spain to permit the transmission of the annual income from Mexico to the Philippine Islands. An application was accordingly made by the head of the Society of Jesus, in which the facts were set forth substantially as before stated, and the necessary permission was requested. By decree of September 13, 1608, this permission was granted as necessary to the founding of a college and seminary in the city of Manila, where the children of the residents of said islands should be educated, and where such a college was needed so much for the purposes of study and of creating ministers of the gospel, of which the applicant, the procurator of the Society of Jesus in the Indies, had been designated as patron. On the 28th day of February, 1610, the vicar-general of the diocese, upon an application of the provincial of the Society of Jesus, after reciting the will of Figueroa, the appointment of the provincial as patron, the establishment of the college, the foundation of twenty scholarships, renewed and confirmed the license and permission of 1601 to Father Gomez to establish the college and celebrate masses therein. On July 12 and 27, 1669, King Philip IV made an unconditional grant to the college of $8,000, and on July 27 of the same year Queen Mariana, of Austria, made a similar grant of $12,000. On the 3d of

May, 1722, the King of Spain received a petition from the head of the Society of Jesus in these islands, stating that the society was administering in the city of Manila "a seminary for grammatical, philosophical, and theological students in the name of San José, founded by Don Esteban Rodriguez de Figueroa," and praying in consideration of the good that it had done and on account of the particular benefit which would result to the whole of said republic that the King receive it within his royal protection, granting it the rights, privileges, and preeminences of a royal college without any prejudice to his royal treasury, with authority to place his royal coat of arms over its doors and other customary places, and to make use of the title in documents and letters. The King deemed it proper to grant the request, admitted the College of San José within his royal protection, honoring it with the royal title of ad honorem in case it should have no patron, upon express condition that it should never cause or produce prejudice or embarrassment to the royal treasury by reason of the title. He commanded the governor of the Philippine Islands and prayed and requested the archbishop of the Metropolitan Church of the city of Manila not to place or allow any embarrassment or impediment whatever to the enjoyment by the College of San José, administered by the members of the Society of Jesus, to the enjoyment of the royal title thereby granted and the other privileges in respect thereto.

In 1768, by the pragmatic sanction, the Jesuits were expelled from the Philippine Islands, their properties were seized by the Crown, and in lieu thereof pensions were allowed to the order. As part of the properties, the governor of the islands seized the College of San José and its estates and treated them in every respect as confiscated to the Crown. The college building was turned into barracks. Against this confiscation the archbishop protested and petitioned the governor-general that, pending the King's action on the protest, the college be delivered to him. The petition was granted, and the archbishop took possession of the college and converted it into a religious seminary for natives. Against this action of the archbishop the court of the audiencia protested to the King, contending that the College of San José should upon principles of law revert to the status fixed by its foundation.

On March 21, 1771, the King acted on the representation of the audiencia and the protest of the archbishop. He disapproved the seizure and despoliation of the properties of the San José College by the governor, but he also disapproved the conversion of the college into a seminary, made subsequently in common accord by the archbishop and governor. In the rescript of the King upon the issue thus presented, he held that the action of the governor was entirely contrary to what was ordered in the instructions for the expulsion of the Jesuit priests, and against the right which those who were in the college at the time, and those who should succeed them in the future, had legitimately acquired to maintain themselves there; that the new order of things in regard to the want of teachers could not serve as an excuse, since priests would not be lacking to be substituted for the present, and in time they would become suitable persons for sustaining this laudable foundation; that the spoliation had been a cause of the most serious damage and pernicious consequence, as it was shown

that the said college was founded with a view to instructing the sons of leading Spanish subjects of that city in grammar, philosophy, and theology; that twenty scholarships were created in it for that many more collegians; that their instruction was undertaken and the direction was intrusted to the expelled priests of the society; that the father of the then King had been pleased to receive it under his sovereign protection on May 3, 1722, and to decorate it with the title of royal ad honorem, provided it should have no other patrons, and upon the express condition that it never would or could produce a burden or charge of any kind on the royal treasury, and that the said Order of the Society of Jesus had no interest in it except the said direction and government; that under the orders of 1769 and 1770, regarding the seizure of the temporalities of the Jesuits, it was decreed "that no change should be made in the colleges, or the secular houses, whose direction and the instruction therein were in their charge; that the governor and the archbishop had exceeded their authority in erecting a new collegiate seminary in the College of San José," and as the College of San José had nothing in common with the expelled priests through their only having had its administration and direction, and this having ended with the expulsion, the said governor ought to have appointed an ecclesiast of good standing as rector and administrator from those who had been students in the same college, as being already instructed in its management, with these instructions, to give an account every year without permitting the archbishop to meddle in anything pertaining to the college, "as it is under my royal protection and therefore totally independent of the ecclesiastical ordinary, as are the other obras pias spoken of by the trindentine."

The King accordingly ordered that all things be placed in the college in the same state and condition in which they were before the change took place.

At the commencement of the year 1777 the governor appointed as rector and administrator of the College Don Ignacio de Salazar, Canonical of the Metropolitan Cathedral, who in that year took charge of the property of the College of San José, and from that time down to 1879, the position of rector-administrator of the College of San José was always intrusted, by appointment of the governor-general, to an ecclesiastic of the cathedral, with the duty of reporting the accounts of his administration every three years. The management of the college was not successful and the administration of its properties was negligent, and possibly in some of its years corrupt. The field of secondary education which it had attempted to fill came to be occupied by newer and more successful institutions, such as the Municipal Atheneum and the College of San Juan de Letran.

Between the years 1860 and 1870, the question of the conversion of the College of St. Joseph into a professional school of some character, of arts, agriculture, or medicine, was much discussed, particularly its conversion into a school of medicine and pharmacy. Finally, in 1867, a board consisting of the rectors of the university, Municipal Atheneum, and College of St. Joseph, and one representative each of the professions of medicine and pharmacy, was convened by royal order and charged with the duty of ascertaining the origin and object of St. Joseph's College, its revenues and pious charges, and the best

manner of installing therein classes of medicine and pharmacy. Its condensed finding is thus reported:

Result: That there only appears the strict obligation of supporting three scholarships with the estate of Tunasan, and one more when the "Mesa de Misericordia" (Table of Mercy) may guarantee its expenses. As to the studies nothing is said of what kind of faculty they shall be—it is only set forth that sons of well-born Spaniards shall be educated in virtue and letters.

Morales de Setien, rector-administrator in 1869, in submitting his report of that year, reaches the same conclusion. He refers to the fact that at that time Manila was provided with five colleges dedicated to secondary instruction, and points to the great advantages which would result if one of these colleges could be devoted to teaching something more adapted to the conditions of the country and the wants of its inhabitants. The rector of the University of St. Thomas also expressed the opinion that the diversion of the greater part of the college's funds to the maintenance of classes of medicine and pharmacy was within the provisions of that clause of the will of the founder, declaring that "if the said funds, after paying the board of said boys and the clothing of those who are poor, should show a surplus, the said patron may dispose of the same as he thinks right for said college or the company, or in other pious works, as he may deem best, without being called to account at any time for any cause or reason whatever."

In short, it was argued that the specific intention of the founder had failed, and that his general intention in favor of educational charity should be effectuated by the government through a cypres application of the funds, or, as the canonical phrase is, by commutation.

In 1870 the Spanish Government adopted the famous decrees concerning education in the Philippine Islands known as the Moret Decrees, by which it was attempted to secularize most of the institutions of learning. Among other provisions in these decrees, was one directing that the College of San José, the College of San Juan de Letran, the Ateneo Municipal should be united in one academy for secondary and entirely secular education, to be known as the Philippine Institute, to be subject to the ultimate control of a superior board of education, which was civil and secular in its character. These decrees were never enforced. They were successfully resisted by those in control of the College of San José and the others as an arbitrary and unjust despoliation.

In 1875, upon the accession to the throne of King Alfonso, new decrees were made by which the University of St. Thomas was reorganized, though the control of it by the Dominican order was not disturbed, and the College of San José was in a sense incorporated into the university. The history of this is found in Colonel Crowder's report, as follows:

The incorporation of the College of St. Joseph into the university and the application of its revenue to the maintenance of the university classes of medicine and pharmacy were accomplished by articles 2 and 12 of this decree of 1875, the former prescribing that "in this university shall be given the necessary studies for the following professions: Jurisprudence, canons, medicine, pharmacy, and notary," and the latter that "the branches of medicine and pharmacy, although constituting an integral part of the university, will be taught in the College of St. Joseph, whose revenues, with the deductions of the amounts for pious charges, will be devoted to the expenses of these branches. The five-sixths

part of the fees from the registration of these subjects and half of the fees for degrees, titles, and certificates of the alumni will also pertain to the college mentioned. The rest will be applied to the general expenses of the university."

These articles conferred a positive benefit and were immediately enforced. Other articles, the effect of which was to impair, to a degree, at least, the Dominican autonomy, were accorded a very different reception, and to these attention will now be invited. The first and most important of these latter articles is article 14, which reads as follows:

"The vice-royal patron, upon the recommendation of the rector, shall name a director for the College of St. Joseph, confiding to him also the administration of its revenues. In lieu of this functionary the senior professor of the branch of medicine will perform the duties of director-administrator."

The rector's first action under this article was the recommendation of Dr. Manuel Clemente, director-administrator of the college, who was appointed by the governor-general. But in 1876–77 there resulted a large deficit in the revenues of the college, and a royal order, dated June 5, 1877, was issued by the minister of colonies recommending a more careful management of the college funds.

When the governor-general received said royal order he convened a commission, and charged it with studying and making recommendations as to the proper way of maintaining the faculties of medicine and pharmacy with the funds of the college alone if possible. This commission condemned the administration of Clemente as unfit and abandoned, and in its report of September 5, 1877, recommended that the rectorage of the university should immediately take charge of the estates, valuables, and all properties and documents of St. Joseph's College; and that regulations for the management of the same be extended. As a result, the governor-general, on September 28, 1877, decreed that an administrative commission, composed of the rector of the university and the professor of pharmacy, Fernando Benitez, should take charge of the college, conferring upon them the powers necessary to carry out the complete reorganization of St. Joseph's College, such as was provided in the royal order of 1875. This commission commenced its work in October, 1877, and on July 26, 1878, submitted its report, in which it recommended that the office of director-administrator should be made two separate offices, the office of director to be filled by the rector of the university, to be rated ex officio director of St. Joseph's, and that of administrator to be filled by the governor-general upon the recommendation of the rector of the university of three names to be taken from the professors of medicine and pharmacy. This report was approved by the governor-general in his decree of August 1, 1878, in which he directed that the immediate direction and government of the college should be hereafter under the charge of the rector of the university, and that the administration of said college should continue in the hands of Don Fernando Benitez, professor of pharmacy. This decree of the governor-general was subsequently approved by royal order of March 24, 1880, with the modification that Benitez, in his post of administrator, should be removable, and that his successors should be named by the governor-general upon the recommendation of the rector of the university of three names, the appointee being always a professor of one of the branches of medicine or pharmacy. By the governor-general's decree of August 1, 1878, the rector was charged with preparing regulations concerning the control and management of the college. It appears that such regulations were issued by the governor-general on October 15, 1879; that title 2 of said regulations gives to the rector of the university, as ex officio director, the control of the properties and finances of the college.

It has thus happened that article 14 of the decree of 1875, which, although it did not direct, certainly permitted the control and management of St. Joseph's College to be given into the hands of a layman, has been in effect abrogated by subsequent orders of the governor-general, approved at Madrid, which place the management and control of the finances in the rector of the university.

Articles 6 to 10 of the decree of 1875 have shared a similar fate. There has never been a competitive examination held either here or at Madrid for vacant professorships, and these have been filled by the governor-general upon the recommendation of the rector. Regulations to carry the decree of 1875 into effect, which were to have been published and remitted to the minister of foreign colonies with all urgency, have not yet been published, although the rector claims that a draft of such regulations was prepared and forwarded in 1876, and a second draft in 1890. * * *

The administration of the college properties is separate from that of the university properties. Two accounts are kept, each with its own funds and dis-

tinct administration, but both under the same direction, to wit, that of the rector of the university. * * * On the whole it seems that the effects of the decree of 1875 upon St. Joseph's College were radical in the extreme when we consider the independence it enjoyed in its earlier history. Its scholarships, which prior to 1870 had been maintained at twenty, were, shortly after this decree went into effect, reduced to three and transferred to another institution. The instruction formerly given within its walls in "virtue and letters," in accordance with alleged requirements of its foundation, gave way, under that decree, to professional education in medicine and pharmacy. Its revenues, deducting the insignificant portion necessary to maintain three scholarships and a few other pious charges, were devoted to the maintenance of the faculties of medicine and pharmacy. But the administration of the college properties was kept distinct; the separate autonomy in this regard remains unimpaired.

The income from the property in normal times seems to be about $20,000 gold and to indicate a foundation of about $500,000 gold.

ARGUMENTS.

In the opening arguments for the complainant the ground was taken based on the history of the college as recited by one ecclesiastical writer, that the college was founded by the royal decree of 1585 and that $1,000 a year was devoted from the royal treasury to its support, that the gift of Figueroa was merely in support of the royal foundation, and that contributions were made by the government of the islands from time to time to aid the college as a royal college. It was said that such a college was wholly free from ecclesiastical control if the King desired to make it so and that he had shown his desire to do so in the establishment of it as a secular college of medicine and pharmacy without any instruction in morals or religion.

The contention on behalf of the complainant that the college was originally of royal foundation by grant of 1,000 pesos annually was denied by the prelates appearing for the church, and in the reply of the complainant's counsel the commission understood this contention not to be insisted on. We come, therefore, to the argument for the church, because the issues really presented for decision are more sharply drawn by the argument for the church and the reply of counsel for the complainant.

The argument on behalf of the church begins with the premise that all ecclesiastical pious works as defined by canonical writers and laws are subject to the ultimate control of the church; that the method of administering such works was fixed by the decrees of the council of Trent, and that by decree of Philip II the canonical law formulated and declared by this great church council has always been recognized as binding in the Kingdom of Spain; that under such decrees there were two ways in which pious ecclesiastical works were administered by the church, one through the control of visitatorial power of the ordinary or bishop of the church and the other through the King; that pious works administered through the King were not subject to the control or visits of the bishop except by license of the King, but that in controlling such works the King was acting merely as the delegated agent or trustee of the church.

In support of the claim that the foundation of the College of San José was a pious ecclesiastical work within the operation of the decrees of the Council of Trent, references are made to the definitions of such works by writers on the canon law in describing the property

devoted to them as a class of church patrimony. The authors cited describe as church patrimony all property destined to succor the poor and needy, including in its category hospitals, asylums, colleges for the education and training of Christians, religious confraternities, and in general institutions and foundations to works of charity and religion, and say that two things are necessary and sufficient in order that the institutions and foundations be ecclesiastical and that their properties pertain to the church; that is to say, that they are by full force of right pious ecclesiastical works: First, that they be founded with the license and authority of the diocesan bishop, and second, that the foundations of the said institutions have been made through motives of charity or religion, or what is equivalent, that they have been made with the idea of promoting holy religion and providing for some moral and material necessity of the founder's fellow-creatures within the church. The argument distinguishes such foundations from those which in modern states are not ecclesiastical institutions because their founders were not influenced in their action by motives of religion or Christian charity, nor did they found them in the exercise of Christian charity, but simply through sentiments of philanthropy and as acts of social beneficence, with the unmistakable absence of all Christian influence or intention. Attention is called to the bull of Pope Alexander VI in 1501, by which the titles and first fruits of the Indies, with the duty of propagating the faith and endowing the churches and appointing ecclesiastical ministers therein and fully to maintain them, were granted to the Kings of Spain; and to that of Pope Julius in 1508, by which the universal patronage, to wit, that of nominating proper persons for churches, cathedrals, monasteries, dignities, colleges, and other ecclesiastical benefices and pious places, was granted to the King of Spain; and to the concordat of 1851 between the Pope and King of Spain, by which it was agreed that the church should have the right of acquisition by any legitimate title whatever, and its proprietorship in all that it possesses in the present or should acquire in the future should be respected, and that no suppression or fusion should take place without the intervention of the authority of the Holy See; and to the covenant of 1860 between the same parties, by which the Spanish Government recognized anew, in a formal manner, the full and free right of the church to acquire, hold, and enjoy the usufruct in ownership without limitation or reserve of all kinds of property or values, and consequently annulled by this covenant whatever previous covenant might be contrary to it, stipulating that the property which in virtue of this right should be acquired and possessed in future by the church should not be counted in the endowment which had been previously assigned to it by the concordat.

Upon these premises the argument on behalf of the church proceeds to point out that the foundation of Figueroa fulfilled one of the two requirements of a pious ecclesiastical work, in that it was a gift by a professing Catholic for the education of Catholics under the administration of a Catholic order, which could do nothing except with permission of the head of the church, in letters and morals—morals which it is conceded by counsel for complainants were Catholic morals—and therefore that the foundation was made through motives of charity and religion, to promote holy religion and provide some moral need to the founder's fellow-creatures within the church; that the

founder's intention to make his gift a pious ecclesiastical work could be clearly seen in the will itself, in which he authorizes the patron to devote a surplus of funds to any other pious works, thereby emphatically implying that he regarded the main foundation as pious work. Reference is also made to the construction placed upon the purpose of the founder in the royal licenses to permit the transmission of funds of the trust from Mexico to the Philippines, and in the decree taking the college under royal protection, by which the foundation is said to be for education of the youth of Manila, in theology among other things, and the preparation of young men as ministers of the holy religion. It is then contended that the other requirement of the definition of a pious ecclesiastical work, to wit, that it be founded with the license and authority of the diocesan bishop when fulfilled as to the College of San José, because, before the Jesuits founded their college in 1601, they obtained a license from the representative of the Archbishop of Manila to do so, and in 1610, after the college had become the foundation of Figueroa under his will, the permission originally given in 1601 was confirmed to administer the college under that foundation, and permission was given to say masses in the school.

The right of the King to take the college under his protection in 1722, and to provide an administrator for the college in 1768, is attributed to the argument for the church to the control given to the King of Spain over church property and tithes and first fruits by the bull of Pope Alexander VI in 1501, and to the still wider power of universal patronage given the same monarch by the bull of Pope Julius II in 1508, and it is said that the King was merely acting as the pope-appointed royal patron of the college in providing administration for the college after the private patron became incapable under the pragmatic sanction, and that the King recognized the ecclesiastical character of the foundation in selecting a priest as administrator.

The argument that the Crown of Spain asserted an absolute right to control the purpose of the college free from the church by the decrees of 1870 and 1875 is met by the contention that the decree of 1870 was never enforced, and that of 1875 was only executed so far as to make the college a part of the sectarian and church-managed University of Saint Thomas, in which the Catholic religion was taught and the Dominican rector administered both trusts for the same purpose, to wit, the conduct of a university under the Catholic Church, and that the diversion of the funds of the College of San José to the various chairs of medicine and pharmacy embraced in such a university is quite in accord with the religious motives of the founder expressed in that clause of his will in which he authorized his patron, when the original purpose failed or was satisfied, to expend the income in other pious works; but that to use the funds for a medical school under civil and secular control, completely divorced from the church and association with a Catholic university, would be a complete departure from the terms of the will and a violation of the intentions of the testator.

Another argument made on behalf of the church rests upon the obligation of the Government of the United States to observe as sacred contract rights created and secured by the granting and acceptance of a charter of the sovereign. It is said that the College of San José, by what was done, was created and became a body corporate,

and that the instruments which made up the charter for its existence, including the will and its recognition by royal decree and license, prescribed a clear and well-defined government for the college by the head of a religious order, and that any attempt to take the college out of ecclesiastical control would be a breach of the contract rights acquired by those for whose benefit the trust was to be administered from the civil sovereign, whose obligations in this regard passed to the United States. Much reliance was put on the decision by the Supreme Court of the United States in the well-known case of Woodward *v.* Dartmouth College, in which it was held not to be competent for the legislature of New Hampshire to change by legislative act the mode of choosing the trustees of Dartmouth College and their number, as prescribed in a royal charter of the King of England granted before the separation of the United States from the mother country, because the accepted charter was a contract which it was forbidden by the Constitution of the United States to a State to impair by legislative act.

The argument for the complainant in reply, assuming, as contended for the church, that the real beginning of the College of San José as a corporate entity and a work of charity began with the vesting of the gift under the will of Figueroa, and that the events occurring between 1601 and 1608 did not change or affect the light in which the college should be viewed, and accepting for the sake of the argument the definition of a pious ecclesiastical work given in the argument for the church, was that the foundation of Figueroa fell short of both requirements stated, in that it was a mere act of philanthropy and secular charity and was not intended to be a provision for the aid of the holy Catholic religion or to be under the control of the church as an ecclesiastical pious work; that the delegation of the power of control and patronage to the head of the Order of Jesus was a mere description of the person of the administrator, and was not intended to put the control of the institution under its patron as a subordinate of the Holy See; that this was most manifest from the express declaration of the testator that no ecclesiastical authority should interfere in the management of the college and its properties, and that the words "other pious works," used in the will, could not, in view of this express exclusion of ecclesiastical authority from ultimate control, be construed to mean ecclesiastical pious works. The argument, as continued, was that Figueroa's foundation failed also to fulfill the second requirement of an ecclesiastical pious work, in that it was not licensed by the diocesan authority as such. It was said that license of the vicar-general of the diocese of 1601 was merely personal permission to the provincial of the Jesuits as a priest to conduct a college and to celebrate masses, and was not a license of an ecclesiastical pious work, for, as conceded in the argument for the church, the college of the Jesuits in 1601 was not an ecclesiastical pious work, for it lacked the substance of a foundation and the permanence involved in the obligation to continue the college forever. After the foundation by Figueroa it was argued there was no diocesan license or authority for the foundation, that the confirmation of the license of 1601 by a diocesan order of 1610 was a mere repetition of the personal license of 1601 to the provincial of the order to do that which without the permission of the bishop he could not as a member of his order do. The contention further was that as this was a mere private

charity for public benefit, the application to the King of Spain for his protection and for the right to be known as a royal college put it under the control of that monarch in the exercise of his royal prerogative as a sovereign, subject only to the exercise by the provincial of the Order of Jesus of his power as patron, and free from any interference by the Church of Rome. The expulsion of the Jesuits, it is said, deprived the trust of the trustee appointed in the will and placed the burden of providing a trustee upon the sovereignty, who had become the protector of the college and who was by general law the parens patriæ and authorized to provide trustees for trusts of this character where the person named in the deed or instrument of foundation to execute the trust had become incapable of continuing to execute it. Continuing the argument, it was said that the rescript of the King in which he censured the Archbishop of Manila and the governor of the islands for despoiling the properties of the College of San José and directed that it be returned to its former status under the will of Figueroa, the administrator to be appointed by the governor, was an assertion by the King of Spain carried into execution of his right in the exercise of his royal prerogative to control the management of the college independently of the archbishop or of the Catholic Church. It was said that the direction to the governor to appoint some ecclesiastic to control the college was not an admission by the King of his obligation to appoint a religious person to the control of the college, but only a conformity to the custom then universal of committing educational institutions to the control of members of the clerical profession, who were almost the only persons then capable of teaching, and that there is in the rescript itself an assertion of the right of the King to appoint a secular person, should such a person be suitable. This argument is enforced by reference to the action of the King in the decree of 1875, by which it was held, apparently with the consent of the ecclesiastical persons who were therein concerned, that the King had authority, by royal order, in view of the fact that the purpose of the founder of the college in furnishing a school for secondary education in morals and letters had become impossible, or rather profitless, because there were other schools which much better discharged these functions in Manila, to change by decree the purpose to which the funds should be devoted and allow them to be used for the conduct and maintenance of a professional school for the education of physicians and pharmacists. It is urged that the secular and nonsectarian character of the education in which the funds were thus devoted by order of the King is the strongest indication: First, that the original donation was regarded by those then in authority not as a religious and ecclesiastical charity, but only as a philanthropic one; and second, that the effect of the decrees was a final decision that the King might, in the exercise of prerogative, without consulting the head of the Church of Rome or any of his ministers, treat the foundation as one completely within his civil control. The argument for the church that all that the King of Spain did or attempted to do in the control of the college was because of his authority as patron of the college under the Papal bull conceding universal patronage in the Indies was met by the contention that ecclesiastical patronage was only the power of presenting a candidate for ecclesiastical benefices or for offices in a religious college, and did not include any control over the ecclesiastical trust

funds or the right to call the official incumbents to an account, and did not embrace the right to change the purposes for which the funds should be used; that powers of this kind could only be exercised by the King as a civil sovereign and parens patriæ.

In reply to the argument for the church based on charter contract rights and principles laid down in the Dartmouth College case, the answer is made that they have no application to the controversy before us, for the reason: First, that it is difficult to find anything in the facts here analogous to the charter in that case, and even if the will could be so regarded, the provision that the college should be managed by the Jesuit provincial had become impossible of execution, for the reason that the person described had become incapable and the purpose profitless and impracticable. Reference is made to the decision of the Supreme Court of the United States in the Mormon Church case (136 U. S.), in which it was held that where a trust failed because of impossibility of execution the United States, as sovereign, had power as parens patriæ to supply a trustee and to order the application of the trust funds to a purpose analogous to that originally fixed in the deed of gift or charter.

Accordingly, here it was urged that as the status of the college at the time of the treaty of Paris was that of a foundation under the civil control of the sovereign of Spain as parens patriæ, the United States in the same capacity had the power to make any suitable provision for the conduct of the college as a school of medicine under any directory it might see fit, and the only suitable directory in a government in which the church was separate from the state was one free from ecclesiastic or monastic influence.

OPINION.

We have thus stated the arguments pro and con in this case as fairly as we could, condensing much and possibly in some instances suggesting additional arguments on each side which do not appear in the briefs. We are now to state our conclusions:

The treaty of Paris between Spain and the United States, by which these islands were ceded to the latter Government, provides in article 8, section 2:

> That the relinquishment or cession, as the case may be, can not in any respect impair the property or rights which by law belong to the peaceful possession of property of all kinds, of provinces, municipalities, public or private establishments, ecclesiastical or civil bodies, or any other associations having legal capacity to acquire and possess property in the aforesaid territories, renounced or ceded, or of private individuals, of whatsoever nationality such individuals may be.

The same obligation would rest upon this Commission and the military government under the instructions of the President for the guidance of the Commission, and the question which must be decided finally to settle this controversy is: What was the status of the property and foundation of the College of San José at the time of the ratification of the treaty of Paris, by which the sovereignty over these islands was transferred from Spain to the United States, and under which the public property situate in these islands and the public civil trusts of the Government and Crown of Spain to be performed here were transferred to the Government of the United States?

It is conceivable that between the Crown of Spain and the head of the Roman Catholic Church there might have been a controversy as to the right of control and management by the Crown over certain property within the territorial jurisdiction of the Kingdom; but if the views of the Crown had been carried into effect by the usual methods of settling rights according to the laws and customs of the existing sovereignty, and possession and control finally established thereby, it would seem that, so far as the United States is concerned, the controversy must be deemed to have been finally settled and not capable of being reopened under the new sovereignty, at least where sufficient time has elapsed to constitute the usual period of prescription. For instance, it could hardly be maintained that the pragmatic sanction, under which the properties of the Jesuit order in 1768 were confiscated and became the property of the Crown of Spain, could now be set aside on the ground that this was an arbitrary act and deprived the order of its property without due process of law. In other words, in a discussion like this, we must have a starting point, and that is the status of the property as settled by the lawful civil decrees of the government whose sovereignty is transferred by the treaty of cession.

It is difficult to escape the inference drawn by Lieutenant-Colonel Crowder from the decrees of 1870 that the Government of Spain then supposed it had the right to secularize the College of San José, but it is also true, as pointed out by the same gentleman in his very learned and able report on the subject, that the parts of the decree which implied this power were not enforced and were frustrated by the resistance of the ecclesiastical authorities in these islands; and the same is to be said of the decrees of 1875 and later years, except so far as it could be said to be a secularization of the properties and foundation of the college to make it a subordinate branch for the teaching of secular subjects in a university conducted by the Dominican order of monks under the ultimate authority of the Pope.

It is apparent from the arguments stated above that among the questions which will probably be of importance in the decision of the issue of this case is whether under the canon law the foundation here made in the will of Figueroa was an ecclesiastical pious work subject to the ultimate control of the Church of Rome; another is, whether the power exercised by the King over colleges under his protection to control them without the intervention of the archbishop was necessarily dependent upon the papal grant or was exercised by the Crown as its own without regard to the church. Another question not much mooted in the discussion before the Commission would probably come up for decision on this issue; and that is, whether the right of universal patronage of the Indies exercised by the Crown of Spain over such an institution as the College of San José finds its source in the bulls of the Pope in 1493, 1501, and 1508, which have already been referred to, or only finds recognition in those bulls of its existence, when in fact its real source was the right of discovery and sovereignty. This issue is one which has been the subject of profound discussion by learned canonists on the one side, upholding the view that the source of it was entirely ecclesiastical and papal, while on the other the contention of certain civilians, notably the fiscal of the royal audiencia of Cuba, D. Eduardo Alonzo y Colmenares, is that the prinicipal and preeminent titles on which

the Kings of Spain base the universal patronage of the Indies are those of discovery and conquest of the dominion and the foundation and endowment of the institution in question; and that the bulls are mere recognitions of a title already established. Another is whether, even if the United States may act as parens patriæ, its provision for a trustee and a purpose analogous to that of the founder should not be limited to that of a trustee who is a priest of the same church as the founder and a purpose nearer to the aims of the Catholic Church than a merely secular professional school.

And doubtless other difficult questions not now considered may arise in a final argument of the case. In other words, in order to decide the merits of this case, we should probably have to consider and settle a nice question of canonical law, and investigate and discuss the historical and legal relations of the Crown of Spain to the head of the Catholic Church. Neither of these questions do we feel competent now to decide with the materials which are before us and with the time at our disposal, nor do we need to do so. We are not a court. We are only a legislative body. It is our expressly delegated function in just such cases as this to provide a means for the peaceful and just decision of the issues arising. Had we been able to decide clearly and emphatically that the petitioners had no rights here and that their claims were so flimsy as not to merit the assistance of the legislature in bringing them to adjudication in a court of justice, we might have properly dismissed the petition and taken no action thereon; but we are of opinion, all of us, that the contentions of the petitioners present serious and difficult questions of law, sufficiently doubtful to require that they should be decided by a learned and impartial court of competent jurisdiction, and that it is our duty to make legislative provision for testing the question. If it be true that the United States is either itself the trustee to administer these funds, or occupies the relation of parens patriæ to them, it becomes its duty to provide for their administration by a proper directory, whose first function will be to assert, in the name and authority of the United States, their right to administer the funds of the college against the adverse claims of the person now in charge, who claims to hold under and by virtue of the control over the funds by the Catholic Church; and this legislative action we now propose to take, not thereby intimating an opinion upon the merits of the case, but merely by this means setting in motion the proper machinery for the ultimate decision by a competent tribunal.

The military government, of which we are the legislature, is a provisional government; but for all this, pending its existence, it has the power to provide for the conservation of public property and the temporary carrying on of trusts with respect to which the sovereign is charged with any duty.

The only tribunal which we can provide for deciding this cause is a tribunal over which, by the instructions of the President, we must exercise the power of appointment. Lest, therefore, any opinion which we might intimate should be used by either side in the case to be argued and decided as authority in that tribunal, we have been careful to express no other definitive opinion than that the petitioners have presented a case of sufficient dignity and seriousness to warrant its full consideration by a court of justice. We think, moreover,

as the United States occupies the relation of general trustee toward the public of the Philippines, in whose behalf the cause is here pressed, that it is not stepping beyond the bounds of impartiality for the commission to devote from the public funds a reasonable sum for the payment of the costs and expenses of the conduct of this litigation by the complainant and those whom he represents. He claims to represent the general public, and, should his petition be granted and his case made, certainly the fund will be administered for the benefit of the general public. In the disturbed condition of the country, when private contributions are difficult to secure, when four years of war have made practically impossible donations for such a purpose sufficient to meet its requirements, it is right that from the public funds provision be made. We think the sum of $5,000 in money of the United States is sufficient for this purpose, and we shall appropriate this amount accordingly to pay the expenses of getting the evidence, preparing the record, printing the briefs, and as fees for professional services. The fund will be enough in view of the provision which we expect to make that the petitioners may call upon the Attorney-General to assist in the prosecution of the case.

It is important that the issue be decided as soon as the proper consideration of so important a question in the due course of justice can be given to it by a competent tribunal. As the United States is practically a party to the litigation, we do not think it necessary to have resort to the ordinary tribunals of first instance. The case is of such signal importance that it may very well be heard by the Supreme Court originally, and we shall provide in the act authorizing the bringing of the suit the procedure to be followed, so as to secure an early hearing on the merits.

The procedure briefly stated will be as follows:

The trustees whom we shall appoint will file their declaration or petition in the Supreme Court, setting forth the legislation under which they act and their appointment, describing the properties of the College of San José, stating in a summary manner the history of the college under which they assert the power of the United States to provide control of the property, and praying a decree of the court directing the surrender by the rector of the University of Santo Tomas, in charge of the properties of the College of San José, to the petitioners. To the petition should be made parties, not only the rector of the university who has charge of the properties, but also the Archbishop of Manila or the Episcopal administrator of the diocese, the Apostolic delegate, as the representative of the Catholic Church, claiming an interest in the property. A summons shall then issue in the usual form, accompanied by a copy of the petition, and shall be served upon the rector of the university and the archbishop, and a return of said summons shall be made by the officer authorized by the court to serve the same within two weeks after it shall issue. The summons shall require that the parties defendant shall answer the petition within thirty days from the day fixed for the return of the service. Upon the filing of the answer in the supreme court, the petitioners shall have two weeks thereafter to file a reply to new matters set up in the answer by way of defense. New matters set up by way of reply shall be taken as denied without further pleading. After the cause shall be thus at issue and the evidence taken, the

supreme court shall give precedence to the hearing of the same and shall set it for as early a date as possible consistent with the proper preparation of the arguments by the opposing parties. Should the court upon final hearing decide that the case of the petitioners is not made out upon law and the evidence, it shall dismiss the petition and award cost against the petitioners. Should the court, on the other hand, decide that the case of the petitioners is made out and that the trustees appointed by this commission are entitled to have possession and control of the foundation and properties of the College of San José and that the Catholic Church, either through the rector of the university or through the archbishop, has no interest or right of control in said property for the purpose of carrying on a school of medicine and pharmacy, the court shall enter a decree finding the right of control and management to be in the trustees and directing the dispossession of the rector of the university of the properties of the College of San José, and decreeing an accounting against him of the rents and profits of the college during his incumbency as administrator of the College of San José which have not been expended in conducting the college or preserving its properties, allowing, however, a credit in such accounting of a reasonable sum for counsel fees and the expenses for the litigation by him incurred. The costs of the case shall not include the counsel fees on either side.

It is not at all unlikely that before the Congress which was elected in November last and which will meet in December next shall finally adjourn it will conclude to confer upon the Supreme Court of the United States jurisdiction to consider appeals from the supreme court of these islands. The present case, involving a construction of the Treaty of Paris and the effect upon public trusts of a transfer of sovereignty from a kingdom in which church and state were united, and one might almost say inextricably fused, to one in which church and state are kept entirely separate, is of such importance as to make most appropriate the submission of the issue to a court of the dignity, learning, ability, and commanding jurisdiction of the Supreme Court of the United States. This commission has no power to confer such jurisdiction upon that court, but it may make a legislative provision which shall prevent the decision of the supreme court of these islands from being so final in its character as to make it impossible for the Congress of the United States, after its rendition, to provide an appeal to the United States Supreme Court. The law to be passed will, therefore, enact that upon the entering of the decree by the supreme court of the islands it shall be immediately carried into effect. If against the petitioner, the petition shall be dismissed and the costs awarded collected; if against the defendants, and in favor of the petitioners, the decree shall be executed by a change of possession and control of the college and an accounting; but the decree shall not become final so as to prevent an appeal, by virtue of a provision of the Congress of the United States, to the Supreme Court of the United States, or some other tribunal, until the 4th of March, 1903.

There remains to be considered the question involved in the petition to the governor to rescind the order of General Otis suspending the conduct of the college under the rector of the University of St. Thomas. In view of the conclusion which we have reached that there

is much to be said on the merits by both parties, it is clear to a demonstration that there is no reason for disturbing or interfering with the possessions of the party whose control and ownership is disputed until final decree. Without considering the wisdom or propriety of the order of General Otis, in view of the military necessity which was then said to be urgent, we are very clear that no such military necessity now exists. There is no evidence before us that the rector of the university and others in control of the funds and property are wasting them, and no reason has been shown for the appointment of a receiver. The administration of the property by those selected by the Spanish Government may certainly continue for the short time pending the hearing of the case without serious detriment to anyone concerned. The arbitrary operation of an injunctive order made without a judicial hearing should be avoided if possible, especially where the issue is a doubtful one, and where judges and lawyers may conscientiously differ. Whether the professional education afforded under the management of those who are now in possession of the properties of the college is as advanced as it should be, or not, it is certainly better that the properties should be used for an educational purpose than that they should lie idle. We shall recommend to the military governor that the injunctive order against the opening of the College of San José by the rector of the university be rescinded.

Before closing, we must fix the number and state the names of the persons to act as trustees to conduct the litigation now about to be begun and to take charge of the college and its estates should the decision and decree of the court be in their favor. The first trustee will be the gentleman who thus far has borne the burden of the contest for those whom he represents, Dr. T. H. Pardo de Tavera. By appointing him or any other trustee who has manifested a zeal in the cause of the complainant we only do so in order that the question shall be energetically pushed to a settlement, and not thereby to indicate that the trustees represent our views on the issue. As the trustees, in a sense, will be asserting the validity of the exercise of power of the Government of the United States, it seems appropriate to make trustee Dr. Charles R. Greenleaf, colonel and chief surgeon, Division of the Philippines, in the United States Army. The third trustee will be Mr. Leon M. Guerrero; the fourth trustee, Manuel Gomez Martinez, M. D., and the fifth Frank S. Bourns, M. D.

There has been much popular and political interest in the controversy in which we have now stated our conclusions. The questions considered, however, have not had any political color at all. They have been purely questions of law and proper legal procedure, and so will they be in the court to which they are now sent. The decision of the right to control San José College can not legitimately be affected by the political feeling which one may have for or against the friars. It is unfortunate that the public should clothe the settlement of an issue purely legal with political significance when it ought not to have and does not have one. But, however this may be, those charged with settling it can pursue only one path, and that is the path of legal right as they see it.

The secretary will now read the bill, which has passed two readings of the commission and which now comes up for a third reading and passage:

[No. 69.]

AN ACT providing a board of trustees to conduct the College of San José as a school of medicine and pharmacy, to bring an action against the persons now in possession of the property of the college, vesting the supreme court with jurisdiction to determine the controversy, and appropriating five thousand dollars to pay the expenses of the litigation.

By authority of the President of the United States, be it enacted by the United States Philippine Commission that—

SECTION 1. T. H. Pardo de Tavera, M. D., Charles R. Greenleaf, M. D., colonel and chief surgeon of the Division of the Philippines in the United States Army, Leon M. Guerrero, Manuel Gomez Martinez, M. D., and Frank S. Bourns, M. D., are hereby constituted a board of trustees to take possession of and manage the property and estates of the College of San José of the city of Manila, to maintain and conduct in the buildings of said college a school of medicine and pharmacy for the benefit of the qualified members of the public of the Philippine Islands, with power to determine the number of professorial chairs to be established, the number of instructors and demonstrators needed, to appoint professors constituting the faculty, to appoint the necessary instructors and demonstrators and other accessory officers and employés, to fix the curriculum, to fix reasonable tuition and other fees to be collected from the students, to determine the period of study necessary for the conferring of the degrees of doctor of medicine and doctor of pharmacy, and to take any other steps needed in the creation and maintenance of an efficient school of medicine and pharmacy for the Philippine people.

SEC. 2. The board hereby constituted shall organize within fourteen days after the passage of this act, shall elect a president and a secretary from its own members, and shall keep minutes of its proceedings.

SEC. 3. Whereas there is now in possession of the property and assets of the College of San José a person who is the rector of the University of Santo Tomás, a member of the Dominican Order, claiming to be in possession by virtue of the ultimate ownership and right of control of said property and estates by the Roman Catholic Church and denying the power of the United States Government either to assume control of said property or to make provision for the administration of the same, as in section one of this act, the board hereby constituted is required, in the discharge of its duties, first, to assert its claim to discharge its duties as imposed by this act in the due and ordinary legal procedure hereinafter set forth, and to take no steps to secure physical possession of the properties and estates of the College of San José until the issue between them and the rector of the University of Santo Tomás and the representatives of the Catholic Church shall have been duly decided by the court of competent jurisdiction as hereinafter prescribed.

SEC. 4. Within thirty days after the passage hereof the board herein constituted shall file its petition in the supreme court of the islands, setting forth the appointment of the board under this act, its powers and duties hereunder, its claim of right to the possession of the properties and estates of the College of San José for the purpose of discharging such duties, the fact that under a claim of right the property is held by the rector of the University of Santo Tomás, representing the ultimate control of the Roman Catholic Church, setting forth succinctly the history of the college and a statement of the facts upon which the right of the United States to provide for the administration of the college is asserted, and praying that the court shall enter a decree ousting the rector of the University of Santo Tomás, or any other minister or representative of the Roman Catholic Church from possession of the properties and estates of said college, and placing the petitioners in possession thereof so as to enable them to dischage the duties imposed upon them by this act. The petition shall make party defendant thereto, not only the rector of the University of Santo Tomás, but also the archbishop of Manila or the archbishop of New Orleans, Apostolic Delegate, who in the absence of the archbishop of Manila from the Philippine Islands is the Episcopal administrator of the archiepiscopal province and of the bishopric of Manila, and shall require said archbishop as the representative of the Roman Catholic Church to set up its claim of ownership and right to control the properties and estates of the College of San José. Upon the filing of the petition a summons shall issue in the usual form against the rector of the University of Santo Tomás and the archbishop of Manila or the Episcopal administrator thereof, accompanied by a certified copy of the petition. A return of the service of such summons and copy upon the parties defendants shall be made within fifteen days after the issuing of the summons by an officer duly authorized to make the service. Within thirty days after the day fixed for the

return of service, the defendants shall file their several answers or a joint answer, as they may elect, stating the facts upon which they deny the right and power of the United States to provide for the administration of said college and its estates and praying a dismissal of the petition at the costs of the petitioners. Within fifteen days after the filing of the answer or answers the petitioners shall have the right to file a reply to any new facts set up in the answer. New averments of the reply shall be considered as denied by the defendants. The cause shall then be at issue and no further pleadings shall be filed. After the cause shall be at issue, the petitioners shall have thirty days in which to take evidence in support of the averments of their petition; the defendants shall have forty-five days in which to take evidence to sustain their answer or answers, and the petitioners fifteen days to take any necessary evidence in reply. The evidence shall be taken in a manner to be prescribed by the supreme court. Within seven days after the cause shall be at issue the parties shall appear before the supreme court and stipulate so far as possible what facts may be taken as agreed upon by all the parties in interest, so as to save the necessity for proof of the same by either party, and this stipulation shall be spread upon the records of the court. When the evidence shall have been submitted, the cause shall be given precedence in the supreme court, and shall be heard at as early a date as possible: *Provided, however*, That for good cause shown, the supreme court may in its discretion extend any of the periods hereinbefore fixed.

SEC. 5 The supreme court of the islands, including all its members, as it is now or may hereafter be constituted, is hereby given jurisdiction to hear the controversy above described and to follow the procedure above defined. After reaching a conclusion upon the issues made, it shall proceed to enter its decree. If it finds in favor of granting the prayer of the petition, it shall enter a decree ousting the defendants from possession of the properties and estates of the College of San José and awarding costs against the defendants, and requiring an accounting by the rector of the University of Santo Tomás of all moneys coming into his hands from such properties and estates, allowing him a credit for all money expended in the conduct of the college, the preservation of its properties and estates, and a credit for the reasonable expenses of defending the suit and costs awarded therein. Should the court find the issues in favor of the defendants, it shall enter a decree dismissing the petition and awarding costs against the petitioners. In no case shall the fees of attorneys, solicitors, or advocates of the successful party be included in the costs adjudged against the losing party.

SEC. 6. Upon the rendition of the decree by the supreme court in the suit hereinabove provided for, the decree shall be immediately executed. If the decree is for the petitioners, they shall be at once put in the possession of the properties and estates of the College of San José, without awaiting the result of the accounting in such case to be decreed, which shall then proceed in due course; if for the defendants, the petition shall be at once dismissed and an execution issue for the collection of the costs: *Provided, however*, That the decree entered shall not be so final in its character as to prevent the Congress of the United States on or before March 3, 1903, from making provision for an appeal from the decree entered by the supreme court under this act to the Supreme Court of the United States or any other court thereof.

SEC. 7. The sum of five thousand dollars ($5,000) in money of the United States is hereby appropriated from any funds in the insular treasury not otherwise appropriated, to pay the costs and expenses of the board of trustees hereby appointed in the litigation herein provided for, including reasonable counsel fees. The money shall be disbursed by the disbursing officer of the commission upon the order of the board, after the money shall have been drawn out of the treasury upon the requisition of the disbursing officer in the manner provided by law. It shall be the duty of the attorney-general of the supreme court to appear as one of the counsel in support of the petition and he shall receive no additional compensation therefor.

SEC. 8. The trustees herein appointed shall hold office subject to the will of the commission. Should any vacancies exist or occur in the board by reason of nonacceptance of the appointment, resignation, or death, the same shall be filled by appointment by the commission.

SEC. 9. The public good requiring the speedy enactment of this bill, the passage of the same is hereby expedited in accordance with section 2 of "An act prescribing the order of procedure by the commission in the enactment of laws," passed September 26, 1900.

SEC. 10. This act shall take effect on its passage.

Enacted January 5, 1901.

OPINION OF THE ATTORNEY-GENERAL OF THE PHILIPPINE ISLANDS AS TO THE HOSPICIO DE SAN JOSE.

ST. JOSEPH ASYLUM—HISTORY OF FOUNDATION AND MANAGEMENT—PRESENT LEGAL STATUS.

The Asylum of St. Joseph was founded by virtue of a royal order dated December 27, 1806. The first funds of the asylum were derived from donations and bequests. A royal order, dated May 27, 1828, provided that the funds of the former battalion of Mestizos should be applied to said asylum. These funds being still insufficient, the governor of the islands, on June 25, 1829, decreed the levying, for the benefit of the asylum, of a tax of 1½ per cent on rice exported by foreigners or natives on foreign vessels or for foreign ports.

The superior board of finance, by resolution passed October 29, 1829, assigned to the St. Joseph Asylum, out of the funds of *Cajas de Comunidad* the sum of $1,000 per annum. This resolution was approved by a royal order October 29, 1831.

On February 5, 1858, the governor-general issued a decree whereby $15,000 were appropriated for said asylum.

On July 13, 1865, the governor-general decreed an increase of the annual assignment of $15,000, received by the asylum, to $25,000.

The management of the institution has always been in the hands of a managing board under the control of the governor-general. The control and management of the asylum was thus exercised by the Spanish Government until the termination of Spanish sovereignty, when the Archbishop of Manila assumed it. *Held:*

That the St. Joseph Asylum was founded by royal order of the Spanish Government and supported by government funds; that it was the property of that Government and is now the property of the United States Government in the Philippines by virtue of the treaty of Paris.

DEPARTMENT OF JUSTICE, *March 12, 1902.*

SIRS: As a result of the investigation made by this office in the matter of the Asylum of St. Joseph, I have the honor to submit herewith a historical narration of the foundation and subsequent transformations and changes of said institution until the termination of Spanish sovereignty in the islands.

This asylum was founded by virtue of a royal order of December 27, 1806, for the purpose of providing shelter and means of living for unfortunate people who, through sickness or other causes, were unable to work. The first funds of the asylum with which its expenses were met were derived from donations and bequests; these funds, by being invested in the business of drafts on America, were increased to such an extent that they exceeded the business of the establishment. On account of the emancipation of the Spanish-American colonies these transactions were discontinued, and the funds of the institution were thereby considerably diminished, so that it became necessary to reduce the number of its inmates and to lease a part of the building.

In view of this distressing situation a royal order, dated May 27, 1828, was issued, which provided that the funds of the former battalion of Mestizos should be applied to the use of the St. Joseph Asylum. The funds still being insufficient, the governor of the islands, on June 25, 1829, decreed the levying, for the benefit of the asylum, of a tax of 1½ per cent on rice exported by foreigners or natives on foreign vessels or for foreign ports. The superior board of finance, by a resolution passed October 29, 1829, assigned to the St. Joseph Asylum out of the funds of *Cajas de Comunidad* the sum of $1,000 per annum. This resolution was approved by a royal order of October 29, 1831.

On February 5, 1858, in order to meet the expenses consequent upon the project for the improvement and enlargement of the institution, the governor-general of the islands, D. Fernando Norzagaray, issued a decree whereby $15,000 from the *Caja Central de Arbitrios* remaining in the general treasury were appropriated for the St. Joseph Asylum. This decree was approved by a royal order of September 12, 1881.

Upon the motion of the same governor, the project which had existed for a long time for enlarging and improving the asylum was carried out and a new building was erected at the expense of the government.

On July 13, 1865, the governor-general decreed the increase to $25,000 of the annual assignment of $15,000 received by the asylum. This decree was ratified March 20, 1888, and approved by the Government of Spain by a royal order of December 17, 1889.

The management of the institution has always been in the hands of a managing board under the control of the governor-general. The chief justice of the supreme court was president ex officio of the board. According to the regulations, approved by a royal order of January 9, 1861, for the government of the institution, the management and control thereof is vested in a board composed of the governor-general, protector; the chief justice of the supreme court, president; two dignitaries of the Catholic Church, appointed by the protector upon the recommendation of the archbishop, of whom the senior, in office or in age, is vice-president; two members of the municipal council, appointed likewise by the protector upon the recommendation of the president of the council; and six gentlemen of good standing in the community and of pious feelings whom the protector may deem proper to appoint. By a royal order of October 6, 1892, it was provided that the presidency of the managing board of the asylum should be held by the provincial of one of the four religious orders established in the islands in place of the chief justice of the supreme court. By virtue of this order the provincial of the Order of St. Augustin was appointed president.

The regimen of the establishment is vested in a director appointed by the governor-general upon the recommendation of the managing board.

The control and management of the St. Joseph Asylum was thus exercised by the government until the termination of the Spanish sovereignty in the islands. Thereupon the Archbishop of Manila assumed control, and it was he who appointed the members of the present managing board as substitutes for those who held the position

formerly. He also appointed the present director of the establishment.

The present board is composed of the prior of the Order of St. Augustin, president; Don José Chouza, parochial priest of the walled city, vice-president; Don Trinidad Jurado, Doctor Doneland, Don Rafael Reyes, Don José de la Rosa, Don Julian la O, and Don Blás Alcuáz, members; Don Manuel Rincon, secretary; Don Emilio Borrero, director.

As a result of the investigation made, I am of the opinion that the St. Joseph Asylum, founded by a royal order of the Spanish Government and supported by government funds, was the property of the Spanish Government, and is now that of the United States Government in the Philippine Islands by virtue of the treaty of Paris. The right of the Government to control and manage the St. Joseph Asylum is therefore beyond question.

Very respectfully, L. R. WILFLEY.

The UNITED STATES PHILIPPINE COMMISSION.

OPINION OF THE ATTORNEY-GENERAL OF THE PHILIPPINE ISLANDS AS TO THE HOSPITAL OF SAN JUAN DE DIOS.

HOSPITAL OF SAN JUAN DE DIOS—ADMINISTRATION.

In 1577 a Franciscan monk, Juan Clemente, obtained permission from the King of Spain to found a hospital, and solicited contributions from the public to carry out the project. It is not known how the institution came into possession of the land occupied by it. For the purpose of assisting the Franciscan Friars, who it seems were the administrators of the hospital, there was founded, about the year 1590, a society called the "Brotherhood of Mercy." The hospital was destroyed in 1603 and the land was ceded to the Brotherhood of Mercy, who erected a new building. This building was demolished in 1655 and the property of the hospital was ceded to the Friars of San Juan de Dios, who continued in the administration of the hospital until the year 1866. The buildings of the hospital were destroyed in 1863, and the finances of the institution being heavily encumbered, the government assumed control of the administration. *Held:*

That in its origin the hospital was a public charity, and the Friars of San Juan de Dios entered into the administration not as owners, but simply as administrators subject to the patronage of the King.

That the laws governing institutions of charity in force in Spain, if not extended to the Philippine Islands by implication, were at all events made applicable by the Civil Code of 1889. Under these laws the royal patronage, including administration, extended to the hospital in question.

That the action of the King in taking over the administration of the hospital in 1866 was for the purpose of preventing a failure of the purposes of the foundation; protests against this action, if any were to be made, should have been made then, and the public, after a use extending over nearly forty years, can not in equity be ousted from a possession reared and protected by the State.

That the administration of the Hospital of San Juan de Dios now pertains to the United States as the successor of the Spanish Government.

DEPARTMENT OF JUSTICE, *May 10, 1902.*

SIR: I have the honor to return the papers in the case of the San Juan de Dios Hospital and to submit the following opinion upon the question raised:

The facts in the case are as follows:

In 1577 a Franciscan monk named Juan Clemente, noted for his learning and charity, obtained permission from his superiors and license from the King to found a hospital, and immediately solicited contributions from the public to carry out his project. It is not known how the institution came into possession of the land, there being no further record than that Fernandez—

filled in the large site occupied by the hospital.

In answer to an inquiry made by the governor-general in 1889 the administrator wrote:

In the archives of the board of administration of pious works no information exists in reference to the conditions under which the hospital of San Juan de Dios of this capital possesses the land upon which it is situated.

In the absence of title deeds or grants it must be assumed that the land belongs to the State.

The hospital was destroyed by fire in 1583 and rebuilt with funds contributed by the public. In 1590 one Juan Fernandez actively associated himself with the management, building a hall at his own expense and soliciting alms for its maintenance. For the purpose of assisting the Franciscan Friars, who it seems were the administrators, there was founded about this time a society called the Brotherhood of Mercy, composed of the leading citizens of Manila, and of which the ecclesiastical governor was elected president.

After the second destruction of the hospital, in 1603, the land was ceded to the Brotherhood of Mercy, who erected a new building, to which they gave the name of "Hospital de la Santa Misericordia." This transfer was made with the consent of the King, the Franciscan Friars retaining the spiritual control of the establishment.

The earthquake of 1655 demolished the building, leaving only the one hall standing. This unfortunate occurrence completely paralyzed the finances of the brotherhood, and finding it impossible to continue the administration, it was resolved to cede the hospital to the friars of San Juan de Dios. This was done in a public writing dated May 31, 1656, which was approved by the King in 1659.

It may be noted here that the possession of the friars of San Juan de Dios was subject to the Leyes de Indias (lib. 1, Tit. IV, ley 5, p. 15), which, among other things, provides:

> It is understood that of the hospitals which they (the friars of San Juan de Dios) administer they are not the owners, neither of their incomes nor of their contributions, but simply the administrators and assistants.

In addition to this, the Brotherhood of Mercy reserved the patronage of the hospital, except that exercised by the King, and as such patrons could visit the institution once a year.

Again, the hospital was built from alms begged from door to door, and the patrimony of the poor sick was so increased that the affairs of the institution were very prosperous until the beginning of the nineteenth century.

The friars then became very immoral and corrupt, though as to the exact nature of their misconduct we are not informed. The mismanagement of the trust became so notorious that in 1852 the Crown decided to suppress the order.

The year 1866 saw a complete failure of the trust. The earthquake of 1863 totally destroyed the buildings; the possessions of the estate were burdened with leonine contracts and immense debts. It was then that the Government assumed control of the administration.

In August, 1866, the governor-general issued an order expelling the friars of San Juan de Dios and turning the administration over to a board of civilians whose president was the president of the audiencia. The order further recited that the hospital should become a civil institution, and that ecclesiastical visits should cease.

The real Hospital of San Juan de Dios dates from this time. Had the estate been wound up in 1866 the assets would have fallen far short of the liabilities. Indeed, it was not certain that the board would succeed in reviving it. It was only through the charity of the citizens of Manila, by organizing charity bazaars, that sufficient money was raised to build the new hospital and to save the estate from bankruptcy.

Until the occupation of Manila by the United States the hospital continued to be administered as a civil institution under the direct supervision of the governor-general. The only change made in the board was in 1891, when, on account of the work devolving upon the president of the audiencia, the presidency was transferred to representatives of the four leading religious orders, said representatives being named by the governor-general. (Royal order, Oct. 6, 1891.) These appointments were civil, and the remainder of the personnel of the board remained as it had been.

We are called upon to determine the nature and the limits of control which may be exercised by the government of the Philippine Islands over the Hospital of San Juan de Dios. The law upon the subject is so intimately connected with the status of the Catholic Church in Spain that an examination of the latter is essential. Although the relationship between church and state was continually varying, yet certain terms used by writers and legislators expressive of the relationship remained unchanged. Prominent among these are *obra pia* and *patronato*. The retention of these names caused much confusion. Spanish writers in analyzing the respective powers of church and state have failed to distinguish between the former meanings of the terms and their present sense. This I shall show as I proceed.

In the history of Spain the church has passed through three stages, sharply defined both in point of time and in the conception which was entertained of it. For convenience I shall designate these the ultramontana, the reglista, and the corporate periods.

The ultramontana period.—This extended from the beginning of the national history of Spain—i. e., from the expulsion of the Moors—to about the middle of the sixteenth century. Its legal expression is the Siete Partidas. The church was all-powerful, and, in its last analysis, was a temporal power dominating the Government of Spain. It is therefore natural that we find canonical law imposed upon the people as a civil obligation; that the first Partida is nothing more than a digest of canon law which Alfonso introduced into Spain to obtain the support of the Pope to his pretensions to the Imperial throne of Germany. (Schmidt's Civil Law of Spain, p. 68.)

The church not only possessed houses of worship and monasteries, but also all the schools, hospitals, maternity houses, and all charitable institutions. These were regarded as *obras pias*. All questions relating to them were determined by ecclesiastical courts. The Partidas, borrowing from the Roman law, declared that religious houses, monasteries, and churches are sacred and that hospitals are religious property. (Partidas 1, Tit. XII, ley 1.) Further, that the above institutions must obey the bishops. (Ibid., ley 2.) Sacred places can not be turned from the service of God to the service of man. (Ibid., ley 3.) The ground upon which sacred edifices are constructed shall forever remain sacred. (Partidas 3, Tit. XXVIII, ley 13.)

Since the above-named institutions were *obras pias*, or ecclesiastical property, it follows that the right of patronage in them was also an ecclesiastical right. But it does not follow that this right was born of ecclesiastical law. The partidas informs us that patronage means "father of a charge;" that patronage is gained by providing a location for a church, by constructing one, and by in-

heriting the right. (Partida 1, Tit. XV, ley 1.) It included the right of presentation and a place in church processions.

The partidas do not treat of what is known to-day as the royal patronage. It nevertheless existed. Alfonso, in Alcala, promulgated a law in 1328 which declares that according to ancient custom in Spain the Kings of Castile must approve the elections of bishops and prelates, because the Kings are the patrons of the churches, and that said bishops and prelates, before taking possession, must do reverence to the King. Jovellanes points out that the right had been established in Leon, Castile, Toledo, and Seville from very early times, and that the partidas, instead of preserving these, merely transcribes the ultramontana maxims of Braciano. (3 Alcubilla Diccionario de Administración, 814.)

Charitable institutions, therefore, during this period occupied substantially the same position as churches and were governed independently of the civil authority.

The royal patronage, if it existed at all, must have been ecclesiastical, since by law the control of these institutions was vested in the Pope.

The source from which the patronage was derived, whether civil or ecclesiastical, was not determined, the power of the church being so great as to silence discussion of it. In a word, the temporal power was spiritualized.

The Regalistas period extended from the time of the council of Trent to the French Revolution. Ultramontanian theories could not be otherwise than obnoxious to Spaniards. Jovellanes relates that the Cortes of Valladolid in 1345, of Guadalajara in 1390, of Valladolid in 1523, of Seville in 1532, and of Madrid in 1534 opposed the laws by which the church was enabled to control so vast a property. (3 Alcubilla Diccionario de Administración, 814.)

In 1480 Fernando and Isabel scored their predecessors who had given away their prerogatives, and reclaimed them with insistence. (Novisima Recopilación, lib. Tit. XVII, ley 5.)

Carlos I of Toledo in 1525 claimed the patronage as an immemorial prerogative. (Ibid., ley 6.)

The real source of the difficulty was but vaguely understood. The church figured not only as an exclusively religious institution, but it was also political and administrative. As a political institution it occupied a seat in the Cortes. In its administrative capacity it created universities, schools, and libraries. (Report of Minister of Justice, 2 Alcubilla Diccionario de Administración, 882.)

Instead of separating what was religious property from civil; instead of confining the church to its proper sphere and converting universities, schools, and hospitals into civil institutions, the Regalistas attacked the problem from another side. The properties of the church were still termed *obras pias*, or *piezas ecclesiasticas*, and were perhaps regarded as sacred, and therefore within the sole jurisdiction of the church. But the church itself came to be regarded as a political or civil institution, and its chief, so far as the management of its temporalities was concerned, and even intrenching upon its spiritual administration, was the King of Spain.

The meaning of patronage became very much broadened. The Crown, in governing the church, and, through it, the obras pias, did it

as royal patron. As patronage originally meant only the power of presentment to benefices this extension of meaning was necessary. We see the word " protector " used in the law, and the phrase " patron or protector." A flood of literature spread over the country having for its object the determination of whether the patronage belonged to the King by virtue of endowing the obras pias, and therefore was a civil right, or whether it was a concession from the Pope and the King was merely a papal delegate.

The concordat of 1737 left the question of patronage open. From 1737 to 1753 each side argued its position with heat. Another question arose. The King claimed that not only did the patronage belong to him, but that all questions relating to patronage could be determined only by his council acting as a court.

The concordat of 1753 recognized the King's title to the patronage, but declared that he could not interfere in purely spiritual matters.

On September 6, 1770, the King and the council promulgated an order for the preservation of the prerogatives of the Crown and the nation in matters taught in the universities. This law was the result of an attack made by Miguel de Ochoa, of the University of Madrid, upon the civil authority. The document was turned over to the bar association for answer, and their reply is incorporated in the law. Extracts from the report follow:

How is the origin of the patronage of the churches in the temporal power? Thus noted authorities have argued, and with reason. (35 Revista de Legislación y Jurisprudencia, p. 82.)

In order to prevent confusion it is necessary to divide ecclesiastical causes into two classes. The first is that in which the King only tries to preserve the state from insults and innovations which disturb the peace. In this are included all forceful measures, such as the examination of bulls, laws of discipline, those of new tithes, the special protection over religious and ecclesiastical associations of the Kingdom, the expulsion of ecclesiastics, etc. This essentially constitutes sovereignty. We conclude this prerogative is a necessary defense of the temporal state, and does not emanate from the church. (Ibid., 107.)

The second class consists of those rights which, being now prerogatives, owe their origin to a generous but most just reward of the church, such as *tercias, diezmos, patronatos.* It is a maxim of law and natural reasoning that the author of a donation can qualify it with restraining conditions, or can amplify it, and as it has been an undeniable practice of the King to exercise jurisdiction in these cases, it appears not repugnant to say that said jurisdiction came from the same source as the donation itself.

Diezmos, tercias, patronato, and other rights coming from the church at the moment they passed to the Crown became profane, because what is called spiritual in these rights is an intrinsic quality arising from the end which they accomplish. Being profane, the royal jurisdiction, which essentially embraces all the temporal, necessarily includes it. (Ibid., 109.)

We prohibit from now on instruction in the universities in question directed against the royal authority and prerogatives. For this purpose the university will note the contents of the report of the bar association. (Ibid., 128.)

The corporation period extends from the French Revolution to the present day. The report of the minister of justice admirably describes the reasons for the change:

The great principles proclaimed by the French constitutional assembly of 1789, and later on accepted enthusiastically by other modern nations, destroyed the foundations of the old states by showing the attributes which correspond to each one of the great social institutions. The civil power had to claim its natural attributes, which, in part, had been exercised until then by the church, and the latter in consequence of this was obliged to renounce the privileges which it had acquired, in this way losing its character as a political and administra-

tive institution. Its personality under these two aspects having disappeared. it no longer required the great property which it had employed to realize the ends which from this time on came under the jurisdiction of the state. (Report of minister of justice, 2 Alcubilla Diccionario de Administración, p. 882.)

Again:

Laical institutions and public beneficences have ceased to be ecclesiastical functions and are now covered by civil funds; therefore the church does not need property for this object. These institutions of charity had been taken away from the church, and the latter was never indemnified for the expropriation, on the ground that "the nation, therefore, owes it an indemnification equal to the value of the property necessary for these (religious) purposes, but not for the remainder of its patrimony, which it devoted to political and administrative purposes. It would not be just that the nation should burden itself doubly for the same expenses." (Ibid., p. 883.)

In this era leading up to the definitive provisions of the Civil Code of 1889 were enacted laws of beneficencia and desamortizacion. The latter separated the church from a great portion of its property and the former organized that part of it which was devoted to charity under a new theory. Instead of being divided into ecclesiastical anl laical institutions, they became public and private. No distinction was made between those owned by the church and other corporations. They were still called obras pias, but not piezas ecclesiasticas, the latter term simply meaning property owned by the church as a corporation.

A reference to Spanish law will sustain this position.

The first decisive blow was struck in 1820 by the law of mortmain. It provides:

Neither churches, monasteries, convents, nor any ecclesiastical associations whatsoever, whether secular or regular, hospitals, orphans' homes, houses of charity and instruction brotherhoods, and other establishments, whether ecclesiastical or laical, or known under the name of manos muertas, shall from this day be allowed to acquire any property or estates in any province of the monarchy, either by will or by donation, purchase, transfer, mortagage, pledge, or by any other title whatsoever.

Previously (September 19, 1798) Charles IV decreed that all estates belonging to hospitals, etc., should be sold.

In 1835 the law of disamortization declared the law of 1820 to be in full force and effect. Upon the heels of this law came the law of charity (1822) providing for the new order of things. It provided that the funds of all foundations, obras pias, or ecclesiastical, whatever their origin, should be reduced to one class; that is, that of institutions for relieving necessities named in the law; further, that all hospitals, etc., shall be under the direction and superintendence of the municipal councils; that all eleemosynary institutions, of whatever class or denomination, be included in the law, and that those not specifically mentioned be suppressed; that the ancient custom of electing nobles or ecclesiastics only to the board of administration be discontinued.

The law of 1841 declared that all property of the secular clergy, whatever its origin, should become property of the nation; only those devoted to public beneficence are excepted.

In 1845 arose the question whether municipal boards had the power to intervene in the accounts of ecclesiastical foundations. The Queen decreed that the superior administrative authority corresponded to the protectorate of all establishments, including those of collective

interests. This shows that the obras pias belonging to ecclesiastics were treated as others, the only question being whether the institution was public or private.

In 1845 the property of the secular clergy not sold was given back.

The law of 1849 declared all charitable institutions public except those supported exclusively out of private funds, provided they accomplish the object of their foundation.

Various other laws of mortmain were passed which incensed the clergy. In 1859 an agreement was reached between the Pope and the Queen. It provided that in the future there should be no sale, exchange, or confiscation of church lands without the consent of the Holy See; that certain lands were to be sold and the proceeds invested in public securities; that the church shall have the right to acquire property and that their right shall be solemnly respected, and therefore the old and new ecclesiastical foundations can not be suppressed without the authority of the Holy See; further, that those who have bought ecclesiastical property under the civil laws, and their successors, should not be molested by the Pope; that all the remaining property provided for in the agreement belonging to ecclesiastical persons or things should be directed and administered according to the discipline of the church.

The construction of this law is clearly indicated by later acts. The King decreed that all monasteries, convents, congregations, and other religious houses of both sexes founded in the Peninsula and adjacent islands since July 29, 1837, be suppressed and that their property should become the property of the state. Exceptions were made of the Sisters of Charity, the escuelas pias, and several other societies dedicated to charity and instruction. "As is seen," says Scaevola, "the church in general has the power to acquire and to possess property of any class, but not so the religious communities." (1 Scaevola Codigo Civil, p. 343.)

Still more strikingly does the civil code evidence the theory that property rights come from the sovereign as the result of the statutes of mortmain. I quote again from Scaevola's Commentaries on the Civil Code:

SEC. 35. The following are judicial persons: First. Corporations, associations, and foundations of public interest recognized by law.

Comments. * * * Those entities are called corporations in which there exists an equilibrium among the members; those are associations in which the individual interest predominates over the collective interest; those are foundations in which the individual interests completely disappear, and, on the contrary, the beneficiaries absorb it entirely; for example, a hospital, a school. (1 Scaevola, Codigo Civil, p. 316.)

SEC. 38. Juridical persons may acquire and possess property of all classes and also contract obligations, institute criminal or civil action in conformity with the laws and rules of their institution. The church will be guided in this regard by what has been agreed between both powers, and the establishments of instruction and charity by what the special laws provide.

Taking into consideration these words, it appears that in order to determine the capacity of the divers collective persons to whom we refer, it ought to be sufficient to examine the law, and yet it is not so. Besides the particular laws which govern the life of the divers entities there exist others of a general character whose object is rather political than civil, which it is necessary to keep in mind—the Statutes of Disentail and Disamortization. (1 Scaevola, Codigo Civil, p. 319.)

It remains only to call attention to the various acts relating to charities. Time and again the Government asserted its protectorate

over eleemosynary institutions. (See Royal order, Mar. 25, 1846; Sept. 28, 1846; the law of June 20, 1849, art. 11, par. 5; regulations of May 14, 1852, tit. 2, art. 29.)

The royal order of October 12, 1860, declares that institutions of beneficence belonging to brotherhoods, etc., are classed as private.

The dean of the Holy Cathedral of Seville requested a decision as to whether the *patronatos* which he administered came within the law of the protectorate. The Government replied, expressing its displeasure at the petition as tending to deny the right of inspection and supreme protectorate of the Government over patrons and administrators of establishments of charity, foundations of a charitable character, and obras pias. (Order, Aug. 23, 1869.)

The question arose in 1871 as to whether a foundation for redemption of captives and for endowing those who wished to take orders came under the laws of beneficencia. The Government says that the word "beneficencia," derived from "benefacere," indicates an institution of charity, whatever be the means employed to succor the unfortunate. (Royal order, Apr. 20, 1871.)

An important act is that of April 27, 1875. Some of its leading provisions are:

ART. 3. Charitable institutions denominated "general," those of patronage of the Government or its delegates and agents, shall be entrusted to a board of patrons.

* * * * * * *

TIT. 1, ART. 1. Those establishments belong to beneficencia general which are classified under this character in the manner provided by law.

ART. 2. Private beneficence comprehends all those institutions created and endowed from private funds and whose patronage and administrators are regulated by their respective founders, or in their name, or confided to corporations, authorities, or determined persons.

ART. 3. Every private institution will acquire the character of public if entrusted by foundation to a patron de officio and the office has been suppressed.

* * * * * * *

ART. 5. Institutions of charity are establishments or permanent associations devoted to gratuitious satisfaction of intellectual or physical necessities, as maternity houses, schools, colleges, hospitals, and other analogous institutions, and also foundations without permanent character, known as patronatos, memorias, legados, obras y casas pias. * * *

ART. 7. To the Government pertains the patronage of all charitable institutions which affect undetermined collectivities and which therefore need it.

ART. 8. * * * In pubic establishments the action of the Government will have no other limits than imposed by law.

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ART. 10. The Government reserves the right to approve the constitutions and regulations of foundations of its patronage, etc.

ART. 11. The minister of state shall have power to create, suppress foundations, modify them in harmony with new social conditions, etc.

Sections 31 and 32 relate to the power of the board of patrons to whom the Government confides the administration of establishments which by law or foundation are of its patronage. The board can make suitable laws of management (to be approved by the Government), prescribe salaries of employees, have the direction and administration of establishments complying with the prescriptions of law and foundation, etc.

Section 32 is devoted to the protectorate exercised by the Government over private patrons.

The result of this legislation, in a word, was that proprietary rights, instead of being determined by the character of the property, were determined by ordinary titles of civil law. An *obra pia* belonged to the individual who had title to it and was not under control of the church on account of any intrinsic quality. In the fifteenth century obra pia meant substantially church property, but in the nineteenth it means any work devoted to either religion or charity. This is clearly deduced from the laws quoted.

Patronage then resolves itself. If of ecclesiastical property, it may be ecclesiastical, but if of temporal, it must be temporal. The law of 1855 shows that Government patronage of charitable institutions includes administration and that public charities are of Government patronage; while of private charities of private patronage the Government exercises a supervision or protectorate which corresponds exactly to our concept of *parens patriæ*.

The questions arise as to what powers the Government would have over a hospital owned by the church. The church, according to the civil code, should be governed by what has been agreed between both powers. But this agreement is merely to the effect that the church shall be respected in its property rights. It does not mean that its hospitals would not come under the general laws of charities. An analogous case would be that of a factory owned by the church and being subject to the general factory laws—for example, of child labor. Otherwise, the church could place at naught many essential laws. That this was the attitude of the Government of Spain is apparent from the decision in the case of the dean of the Cathedral of Seville, *supra*.

Nor would the patronage of such a hospital be an ecclesiastical patronage. The latter term, as defined by the council of Trent, relates merely to presentments, but the law of 1875 in unmistakable terms shows that the Government patronage is of protectorship as well as of administration, the latter being delegated in order to allow a free exercise of the former. In exercising this protectorship the Government has sometimes signed itself as patron and at others as protector.

The protectorate is the superintendence and tutelage which the Government exercises—scrutinizing the acts of the patrons, taking care that the will of the founders be accomplished, and interpreting and supplying it in necessary cases. The Government, besides exercising the general functions of the protectorate, has also the special ones of the patronage in those establishments which it has founded or which has been conferred upon it by private individuals or with which it is charged by reason of the foundation being bereft of representation. In such cases it gives the patronage in charge of special committees in order to make free the power which it reserves to itself over these committees. (Derecho Administrativo Santa Maria, 403.)

That the protectorship is a temporal power needs no defense, it being one of these prerogatives without which there can be no sovereignty. Under the civil code the religious corporations are separated from the church. They are not within the provision of the concordats, as is proved by the confiscation of much of their property in 1868. If they own hospitals, it is simply as any other private corporation, and upon their dissolution or suppression the property becomes property of public beneficence and does not, according to the laws of charity, pass to the church. The supreme court of Spain

decided that an estate left in charge of prelates who were its patrons and administrators was a private institution of beneficence, the said patrons not having been suppressed. (Gaceta Oficial, 1866, p. 24.)

We come now to the discussion of the application of the above jurisprudence to the Philippines. It is provided by the laws of the Indies that in cases where there is no law on the subject in the Philippines the laws of Castile must be observed. (Recopilación de Indias, book 2, Tit. I, leyes 1, 2.)

The declaration of the King of Spain in regard to the royal patronage of the Indies, found in the laws of the Indies, which provides that the patronage of the King shall extend over all hospitals built in the Philippines, was promulgated during what we have termed the period of the regalistas. It will be remembered that at this time charitable institutions were regarded as religious places and their administration was intrusted to the clergy, but that the Crown specifically declared that the patronage was a civil prerogative, and that virtually the church was nothing more than a part of the administrative machinery of the state. In spite of the fact that the laws of mortmain were not extended to the Philippines, and it was so declared, yet we can not conceive how the theory of charity and charitable institutions which had undergone such an immense change in Spain could not have become affected as applied to the Philippines. That the influence of the corporation period was potent in the Philippines may be gathered from a reference to the works of San Pedro, which classify all the hospitals in the Philippines under the head of *beneficencia*. In 1880 the governor-general appointed a committee on charity, consisting of the charitably disposed women of Manila, for the purpose of collecting funds especially for the San Juan de Dios Hospital, and for all other institutions of charity. All doubts, however, are resolved by the civil code of 1889. Its provision that institutions of charity shall be governed by what the special laws upon the subject provide of itself extends all the laws of charity of Spain to the island. If it does not, the meaning of the said section would not be clear; in fact, it would have no meaning at all. Scaevola, quoted above, distinctly makes this statement:

> On no other theory can we account for the legislation, especially with reference to the hospital in question, of the last forty years.

Specifically applying these laws to the Hospital of San Juan de Dios, I conclude that during the sixteenth and seventeenth centuries it was nothing more than a public charity, administered by the clergy, because customarily all charities were so administered. It was undoubtedly termed *obra pia*, and still is classed as such. I have shown, however, that this classification in no wise determines proprietary rights. The Laws of the Indies (book 1, Title IV, law 5, par. 15), quoted above, conclusively show that the friars of San Juan de Dios entered into the administration of the hospital not as owners but simply as administrators. The order of 1866 was therefore not an exercise of arbitrary power. The laws of charity contained many provisions by which private institutions (if this can be considered as a private institution) will acquire the character of public institutions, among them being a failure of the trust, or a failure of administration, or a lack of funds. In 1866 there really was no hospital, the buildings having been destroyed and the properties of the friars

heavily mortgaged. The estates were not sufficient to cover the indebtedness of the foundation. It was not only just, but necessary, that the King should take over the administration of the hospital in order to accomplish the will of the founder. The matter may be treated as *res adjudicata*. Protests, if any were to be made, should have been made in 1866. The public, after a use extending over nearly forty years, can not in equity or good conscience be ousted from a possession reared and protected by the state, even though the stand taken by the King was unjust; for it is evident that the injustice of such a course would be far greater than would have been the latter.

The action of the King effectually disposes of any plea on the part of the church that the institution was an ecclesiastical *obra pia*, for it is impossible to go behind the King's order, and whatever may have been the nature of the foundation before 1866 there can be no doubt as to the intention of the King in the order quoted. The document is also valuable in that it is an interpretation by the highest court of the land of the doctrine of patronage. It proves that the deductions which we have made from the general legislation of Spain that the patronage, as applied to hospitals, whatever it may have meant two centuries ago, to-day means nothing more than protectorship and administration, is correct. Having declared the hospital to be civil, the monarch signed all acts relating to it as patron, thereby showing that he considered the patronage to be civil. In 1874 the hospital is specifically denominated the Civil Hospital of San Juan de Dios, showing that the hitherto signed acts as patron did not, in the mind of the sovereign, change the character of the institution.

Further proof is found in the royal order of 1883:

The patronage extends to everything that is not purely spiritual.

In 1889 General Weyler, then governor-general of the Philippines, in a general order relating to the management of hospitals, declared the Government to be the patron or protector of charitable institutions. The concordat of 1753 and those following, recognized the protectorship as being a strictly temporal prerogative of the King, so that if the patronage as used in the Philippines was a protectorate, it could possess nothing of the spiritual and could not, therefore, be derived from the Pope. The fact is that the action of the King was analogous to that taken by the United States in the *Mormon Church case* (136 U. S., 1) and was, whatever the name by which it was called, purely an act in the exercise of the prerogative of *parens patriæ*.

The court will look at the nature of the acts to determine the prerogatives under which they were exercised, and not the names under which action was taken.

I conclude that the hospital is a foundation, as known under the civil code, and that by reason of the laws of charity having been extended by implication to the Philippines, and also specifically by the said code, it is a public institution of charity, and that the right of administration resides in the Government, which should take possession of the same, resorting in case of necessity to the courts to do so.

Very respectfully,

L. R. WILFLEY.

The CIVIL GOVERNOR.

This serves to confirm that which we have said above—that the priests of San Juan de Dios did not become owners of the hospital, but only exercised administration over the same by delegation from the civil power, and under supervision thereof.

So it is also that, in spite of the deed of May 31, 1656, by which the Brotherhood of Santa Misericordia ceded to the priests of San Juan de Dios this hospital, stating that the said brotherhood made irrevocable donation to the Order of San Juan de Dios, and in their name to the vice-comisario of the same, of a hospital, houses and properties, annuities, accounts and debts, "negros y negras" (referring to vestments), linen and medicines, and everything pertaining to the said hospital and to divine worship, and all that then and in the future should to it pertain, in order that, as their property, "the priests should collect and enjoy them, using them according to their will, without restraint," the said priests did not acquire the property of the hospital. Apart from the fact that the brotherhood that made the cession did not possess the property, the law of the Indies cited declares that the priests mentioned should have charge of the hospitals, not to make convents of them, but only that they should in them give relief to the sick in conformity with the principal object of their institution, the ordinances of which (cap. 15) are as follows:

That the Brothers of San Juan de Dios who shall be entrusted with the administering of the said hospital, and those that may be by them empowered with the management of the same, are given to understand that they do not exercise this authority as owners or proprietors of same and of their incomes and charities or alms, but as administrators and assistants of the said hospitals and of their poor, and in order to serve God in them, and to increase the pious and laudable object and vocation of their religion.

Taking into account these antecedents, it is not extraordinary that when, after the lapse of years, the priests of San Juan, forgetting the object of their institution and the mission that had been entrusted to them, and being guilty of conduct unworthy of their calling, and also exercising improper administration of the hospital, a royal cedula was issued on October 19, 1852, in which, among other things, the following is provided:

IX. One of the points which represents most conspicuously the piety of my glorious predecessors has been the care they have taken in providing resources for the establishment of hospitals in all the towns of the Indies, and in the cities and villages inhabited by Spaniards, dictating the rules to which the Brothers of San Juan de Dios and other orders have to subject themselves in the administration of the same, when for convenience they entrusted these orders with the care of them; but, as in the course of time many of these rules have been forgotten, and others have fallen into disuse, and as, above all, the suppression of the order of San Juan de Dios in the Peninsula has led to a diminution in these islands of the number of brothers of this order to such a degree that it is now impossible to properly attend to these hospitals, and moreover the vigilance formerly exercised over them by the superior of the order lacking, as there is no longer such an official, and it being desirable to find a remedy for this unsatisfactory condition in these hospitals, and being convinced that nothing would more greatly contribute to their improvement than the substitution of Sisters of Charity in the place of the Brothers of San Juan de Dios, as the sisters are achieving excellent results everywhere. I have directed that petition be made to His Holiness for the proper bull for the extinction of the houses of San Juan de Dios in these islands, and that in their place be sent Sisters of Charity to establish a nunnery in order that they may take charge of the hospitals, and also undertake the education of girls in the colleges of Santa Potenciana, Santa Isabel, the Jesuits, and San Sebastian, acting in conjunction with the patrons thereof. (Rodriguez San Pedro, Colonial Legislation, vol. 7, p. 880.)

Clemente, nor to the order of San Francisco; they were made to the hospital for the purposes to which it was dedicated. Neither Father Juan Fernandez, also a Franciscan, who continued the work of his religious brother, nor the brotherhood of Santa Misericordia, which collaborated in sustaining the hospital and which later took charge of it, nor the priests of San Juan de Dios, to whom said brotherhood delivered the Hospital of San Juan de Dios, would be able to call themselves owners of the hospital.

It therefore remains settled that the Hospital of San Juan de Dios, from the date of its foundation until it passed into the hands of the priests of San Juan de Dios, was a foundation with proper existence, established for the benefit of the sick, and was not the particular property of the persons who took charge of it, and consequently was not the property of the Catholic Church, notwithstanding the ecclesiastical character of the Franciscan priests and those of San Juan de Dios. The Fathers of San Francisco, the Brotherhood of Santa Misericordia, and the priests of San Juan de Dios did not, in the opinion of the special patrons of the hospital, exercise more than the administration thereof.

In endeavoring to study this question we must observe that the character of the hospital was both civil and ecclesiastical. This was due to the bonds which united so intimately the church and state, not only in Spain but also in the colonies, so that the church exercised civil functions and the state interested itself in matters of a purely ecclesiastical character.

In accordance, nevertheless, with the provisions of the laws of the Indies relative to hospitals, the Government has the supreme authority and right of superintendence over the hosiptal, the exercise of which authority and superintendence did not have to be delegated by the church, the power of the sovereign sufficing for this, for the reason that in his tutelary capacity he was called upon to provide for the interests of his subjects and to see that the purposes of public institutions were accomplished.

Law 1, Tit. IV, book 1, of the Recopilacion of the said laws provides that "hospitals shall be established in all the Spanish and Indian towns." The third law of the same title and book provides that "viceroys, audiencias, and governors shall exercise care over the hospitals;" the fifth, that "the priests of the beatified Juan de Dios, in the administration of the hospitals which they have in their charge, shall maintain the form prescribed by this law," which law contains important provisions; the twentieth, that "the hospitals of Manila shall be in charge of the judge of the audiencia."

The fifth law cited above, among other things, contains the following:

7. That the priests are given to understand that the hospitals entrusted to them, or which may be entrusted, are not given to them in order that they may be used as convents of their religion, nor that they may use them for its propaganda, since even to the most ancient this is not permitted without our particular license. and others are totally prohibited from establishing themselves in the Indies; and our will and intention in intrusting to them said hospitals is only that they may succor the sick in them, in accordance with their first and principal institution, which they have to maintain and accomplish, except in the edifices that by our law shall be declared to be convents only and used as such, and those which by particular permission and license shall be permitted to be used for this purpose.

power, it could not have been transferred to the United States by virtue of the treaty of Paris, owing to the separation of church and state prevailing in that country. Such an argument would be unfounded and absolutely without support, unless it be upon the inadmissible supposition, which has served as a starting point for the church and its representatives in other questions, that eleemosynary institutions, founded by the authority of the church and with the license of the King, are pious foundations, which form part of the property of the church, whose administration is vested in the latter by canon law, and that the administration of the government is under the patronage and by delegation of the Pope. Such an argument would be to establish as a fact a controverted theory.

Much might be said on the subject of patronage, but neither time nor the purpose of this communication will permit.

I might add, however, that the Hospital of San Juan de Dios, as shown by the foregoing, is not the property of the church, and that the latter therefore can advance no right to the administration of the hospital. It is a charitable foundation of public character, whose authorized patron, the Order of San Juan de Dios, has been suppressed. In the absence of any person to take charge of the administration, the government, as the tutelary power of the nation, or as *parens patriæ*, is under the duty of providing for the vacant administration, in order that, in the interests of the public, the purposes of the establishment may not fail for the public benefit. Such power and duty is an attribute of sovereignty, and as such is exercised even in those countries in which church and state are separate.

The exclusively civil character of the Hospital of San Juan de Dios is in no wise modified by the fact that the royal order of October 6, 1891, on account of the many and pressing duties devolving by reason of his office upon the president of the audiencia, directed that the presidency of the board of the Hospital of San Juan de Dios, and of other charitable institutions, be filled by the provincial of one of the four religious orders established in these islands, as this appointment was made by the civil authorities, and the provincials performed their duties as officers of the state.

What has been said leads to a confirmation of the conclusion that the Hospital of San Juan de Dios is a charitable foundation, existing independently, and is a juridical person within the meaning of article 35 of the civil code, and that the administration thereof pertains to the Government of the United States in these islands in subrogation of the Government of Spain, in which it was formerly vested.

Very respectfully,

GREGORIO ARANETA,
Solicitor-General.

Approved:
L. R. WILFLEY.

The CIVIL GOVERNOR.

OLD STATUTES OF THE BANCO ESPAÑOL-FILIPINO.

OFFICE OF THE COLONIAL MINISTER.

STATUTES OF THE BANCO ESPAÑOL-FILIPINO.

TITLE I.—*The name, constitution, title, object, domicile, and duration of the association (sociedad).*

ARTICLE 1. The Banco Español-Filipino, duly incorporated in 1851 and reorganized by virtue of royal decree of February 7, 1896, shall be governed by these statutes.

ART. 2. The Banco Español-Filipino shall continue to exist for a period of twenty-five years commencing from the 1st of January, 1903. Upon the necessary proceedings being had and due authorization granted, this period may be extended at the request of the general board of stockholders (junta general de accionistas) provided such request be made at least one year before the expiration of the twenty-five years mentioned.

ART. 3. The domicile of this association (sociedad) shall be at Manila.

ART. 4. The business in which the bank may engage is as follows:

(1) Discounting bills of exchange (letras de cambio) and commercial promissory notes (pagares de comercio) whether the bearer be a merchant or otherwise. The bills of exchange referred to must not extend beyond six months, and the promissory notes referred to not beyond ninety days, and both shall have the guaranties and requisites provided by article 7.

(2) Making collections intrusted to it of current and cash obligations (obligaciones corrientes y efectivas) and it may make advances upon the same in such cases as the governing board (junta de gobierno) shall decide upon.

(3) Opening current accounts in coined money (metalico), public or industrial and mercantile securities (efectos publicos ó valores industriales y mercantiles) issued by legally established concerns (firms).

(4) Caring for voluntary, necessary, and judicial deposits made to it in money, ingots or jewels of gold and silver with or without precious stones, public or industrial and mercantile securities issued by legally established concerns (firms).

(5) Negotiating or drawing domestic or foreign bills of exchange, observing the formalities laid down in the Code of Commerce.

(6) Dealing in gold and silver.

(7) Making loans for a period not to exceed ninety days with guaranty and collateral (deposito) such as precious metals, articles of commerce, products of the country, public or industrial and mercan-

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tile securities that are safe and easily realized upon, provided, however, that all such collateral shall first be approved by the governing board. Such collateral shall be received at three-fourths its value or quotation. When, however, the person or legal entity to which a loan is to be made is, in the judgment of the governing board, sufficiently solvent apart form the collateral given, then the governing board may direct that such collateral shall be received at 90 per cent of its value, provided always that the same consists of products of the country, public or other securities easily realized upon, and that the borrower appear on the credit list of the bank. In every such case, however, the borrower shall be required to replace in coin, public securities (valores publicos ó efectos) the amount of the depreciation which such securities may suffer, so that the amount advanced thereon may at all times be fully covered.

(8) Loans on bills of lading accompanied by invoices and insurance policies, in which cases the amount advanced shall not exceed three-fourths of the value of the articles covered by such bill of lading according to the current market price.

(9) Giving credit, deposit first being made, upon public or industrial and mercantile securities approved by the governing board to such amount as the rate fixed for loans may indicate. Persons to whom such credit is given, whether they make use of the same or not, shall pay a commission on the amount thereof in such amount as the governing board may direct and also such interest as may be agreed upon beforehand on the funds placed at their disposal. Credit may also be advanced on current accounts with security (garantia). In returning and selling securities (garantias) the same rules shall be observed that are provided for securities (garantias) in the case of loans.

(10) Raising funds on securities belonging to it or otherwise negotiating the same whenever it may be necessary.

(11) Contracting with the treasury of the islands under security given by the same through its suboffices (dependencias), and authority being first had from the colonial minister.

(12) Making loans to provinces or municipalities within its territory upon approval by the protector and upon good collateral (seguras garantias).

(13) Making loans to firms and associations established in the archipelago, and which, in the opinion of the governing board, shall be able to meet their obligations.

(14) Making loans on property (fincas) to one-half the value thereof, and in no case shall it issue debentures without right of redemption.

(15) Making loans on ships which are insured, without liability for loss, the amount advanced in such case not exceeding one-half the value of the ship and not for a period of more than one year. The foregoing transactions can be made only when there is a surplus in the treasury and there is not, in the judgment of the governing board, a reasonable hope of being able to employ such surplus advantageously in mercantile transactions.

(16) Discounting acquittances (cartas de pago) of the "Caja de Depositos" at Manila within the time specified in the by-laws (plazos reglamentarios).

(17) Undertaking on commission such other banking business or credits as it may deem proper.

(18) Arranging with the colonial minister or his duly authorized representatives for the issue and negotiation of public securities, the payment of obligations incurred through the same, or any other service of the treasury.

(19) And, finally, transacting such other business as in the judgment of the governing board may be required by the commercial needs and practices of the archipelago, and which is compatible with the safety of other business.

ART. 5. The bank shall not deal in public securities (efectos publicos), but it may acquire directly from the state such securities when issued by it.

Mortgage obligations created by royal decree of June 28, 1897, are excepted from this restriction and the same may be freely acquired and disposed of by the bank.

ART. 6. The bank shall not acquire by purchase its own stock, nor shall it accept the same as security on loans nor transact any business based thereon.

ART. 7. Bills of exchange and promissory notes discounted by the bank must comply with the requirements of the code of commerce, and, furthermore, be signed by two persons known to be solvent, one of which persons must necessarily appear on the credit list of the bank and be a resident in the locality where the transaction is had.

Should one of said signatures be wanting, it may be supplied by the security mentioned in the seventh provision of article 4. In no case shall promissory notes or bills of exchange (or drafts) be discounted which in the judgment of the bank authorities have already been discharged (valores de solucion).

Treasury drafts on its funds (?) may be discounted without the signatures and other requirements provided for in the case of private parties.

ART. 8. Before making a loan on precious metals, articles of commerce, and products of the country on deposit, the value of the same shall be assessed by experts appointed by the bank officials. The bank will in no case be responsible for waste or damage to articles of commerce and products of the country deposited with it.

ART. 9. Buildings (fincas) upon which mortgages are to be executed to the bank, must show a perfect title and be free from all incumbrances and responsibility, and, in case they are city property, they must be constructed of strong materials (materiales fuertes) and covered by insurance.

ART. 10. Articles covered by bills of lading upon which the bank is to make loans shall be consigned to such person as the bank shall designate at the point of destination, which person shall deduct the current commissions and carry out the orders of the owners thereof in order to effect returns, but directing them to the bank for the final settlement of the transaction.

Should the articles be lost, the bank may proceed, at its election, against the owner thereof for the amount agreed upon, or against the company insuring the same for the amount of the insurance.

ART. 11. For deposits made in the bank the proper officers thereof (administracion) shall issue suitable receipt setting forth: First,

the name and domicile of the depositor or official ordering the deposit; second, the nature and value of the deposit and whether it consists of ingots or jewels of gold or silver, its weight and particular qualities; third, the date of the deposit, and the number of its register.

ART. 12. The officers of the bank (administracion) shall be the judge whether it allow or refuse the discounting of bills of exchange or drafts and promissory notes presented to it, as also requests for loans made to it, and such other transactions as may be proposed, and in no case shall they be obliged to give the reasons for their ruling.

ART. 13. The interest on discounts and loans and also on deposits, collections, mortgages, etc., shall be fixed every six months by the governing board of the bank with the approval of the protector; and the expenses of assessment of articles given as security, and such other expenses as such transaction may require, shall be charged to the borrower.

ART. 14. The bank shall have the power to order the sale of securities (colateral-garantías) consisting of securities or effects (valores ó efectos) three days after having called upon the debtor, simply by written notice, to replace the loss in such securities (colateral-garantías), should he not then do so, or after the expiration of the period for which the loan was made should he not have paid the amount thereof. Such sales shall be made at extrajudicial public sale, at which transaction a notary public, a lawfully appointed exchange agent, or duly licensed broker shall assist, without the necessity of a judicial order to that effect; and in order that there be no obstacle in such transfers and that the bank may at all times make the sale without the intervention of the debtor, it shall be set forth in the record of the loan that the articles given as security shall be considered as transferred to the bank, without other formality, by the mere fact of having delivered them to the same as such, and to date from the day on which the bank shall have acquired the right of sale according to the first paragraph (sentence) of this article.

Nonnegotiable securities (valores nominatives) must be transferred in due form; nevertheless (but) the directors of the bank shall give to the parties interested a receipt setting forth the sole and exclusive purpose of such transfer.

Should the proceeds from the sale of securities not fully cover the amount loaned, with interest and expenses thereon, the bank may proceed for what remains due against the debtor; should the proceeds exceed said amount, the excess, should there be any, shall be returned.

In the case of loans made on bills of lading, the borrowers shall be required to replace the security whenever the same is reduced by more than ten per cent of its value; and if upon the maturity of the obligation the same have not been satisfied, and the ship bearing the effects or merchandise that constitute the security should not have arrived, the bank may proceed against the debtor or wait the arrival of the ship in order to make a sale of said securities, with the understanding, however, that should the bank elect the former remedy it shall not thereby lose its right to proceed against the security at such time and in such manner as may be proper.

ART. 15. The bank shall have the exclusive right of issuing bank notes throughout the archipelago, payable at sight to bearer, to three times the amount of the capital stock issued and outstanding (capital efectivo que tenga apartado), subject to the provisions of article 180 of the Code of Commerce, or, in other words, whenever it has in its vaults, in coin, a fourth part, at least, of the amount of deposits, current accounts in coin, and bank notes in circulation. The bank notes which may be issued shall be of five, ten, twenty-five, fifty, one hundred, and two hundred pesos each.

ART. 16. The counterfeiting (falsificatión) of the notes of the bank, and the wilful passing of counterfeit or forged bank notes, shall be prosecuted by the State with the same activity and energy as in the case of a public crime, and punished in accordance with law. The bank may join as a party in the prosecution should it so desire.

ART. 17. The bank shall open a branch (sucursal) in Iloilo and such other points in the archipelago as the general board of stockholders may deem necessary. Branches in points other than Iloilo may be established only when the bank has a capital of two million pesos, and after first having had the approval of the colonial minister with regard to the place where the branch is to be situated.

In each branch there shall be placed on deposit such amount of the bank notes as the importance of its operations may require, and such bank notes shall be identified by a seal indicating the place to which they belong.

Such branches may be closed down when in the judgment of the governing board of the bank it has been shown they are no longer useful for the object for which they were created, and upon full report to the first general meeting following, and communicating the action of said general meeting to the protector.

Since these branches are a part of the bank, the capital of the bank shall be responsible for the legal effects of the obligations which they lawfully contract.

These branches shall be governed by instructions drawn by the governing board, subject to these statutes.

ART. 18. Foreigners may acquire stock in the bank and engage in all other transactions of exchange and draft (operaciones de cambio y giro) relating to the bank, in the same manner as Spanish subjects (nacionales); but they shall not be allowed to hold any office in the government and administration of the bank unless they possess naturalization papers and are domiciled in the country. Securities deposited in the bank belonging to foreigners shall not be subject to attachment, confiscation, or seizure (represalia) in case of war between their respective nations.

ART. 19. Whenever doubts or controvercies arise in matters concerning the internal government of the bank or compliance with its statutes or by-laws, the same shall be settled by the protector as governor (gubernativamente) upon first hearing the report from the governing board.

ART. 20. The Banco Español-Filipino may be called upon (adquiere) to aid the treasury of the archipelago by a gratuitous loan up to the amount of five hundred thousand (₱500,000) pesos, when the capital of the bank does not exceed one million five hundred thousand (₱1,500,000) pesos, and with a third part of its capital when it

does exceed this amount. In either case the time for which the bank may be obliged to advance the 500,000 pesos or third part of its capital, shall not exceed six months in each calendar year (año natural); and this amount may be loaned in one or several sums, either at one time or at distinct periods. In all other transactions which the treasury of these islands may have with the bank, the interest shall be one and one-half per cent less than the current discount given the public, and said interest shall in no case exceed five per cent per annum.

TITLE II.—*Capital stock (capital social) and shares.*

ART. 21. The Banco Español-Filipino, established with a capital of one million five hundred thousand (₱1,500,000) pesos, may increase its capital to three million (₱3,000,000) pesos, according as the commercial needs and the development of its operations may require, and upon first having the consent of the general board of stockholders.

ART. 22. Both the capital indicated of one million five hundred thousand (₱1,500,000) pesos, and any increase of the same that may be made up to the sum of three million pesos, shall be represented by shares of the face value (acciones nominativas) of two hundred (₱200) pesos each.

ART. 23. Said capital of one million five hundred thousand (₱1,500,000) pesos shall be (está) represented by 7,500 shares at 200 pesos each.

The shares that may be issued until the capital of three million pesos authorized to the bank is completed shall be issued when the general board (of stockholders) authorizes the increase of the capital, in which case the issue shall be made upon payment of (satisfaciendose) 200 pesos for each share, plus such percentage at least as corresponds to such share with respect to the amount (importancia) of reserve funds on hand in the bank on the date of issue.

ART. 24. The bank shall maintain a legal reserve fund of fifteen per cent of its capital stock issued and outstanding (capital efectivo). This fund shall be subject to the same obligations as said capital, and it shall be made up of the net profits resulting from the operations of the bank after deducting the annual interest of the capital, which in no case shall exceed eight per cent.

Besides this fund, the bank may create another voluntary reserve fund to cover the dividends, when the net distributable profits do not reach eight per cent of the amount represented by each share (capital de cada accion). This fund shall in no case be applied to increasing the capital of the bank.

ART. 25. The shares of stock of the bank shall be represented by inscribing (inscripciones) the name of a given person or entity in the bank register, and by issuing to the owners thereof stock certificates (titulos nominales). In the same way the new stock for the increase of the present capital of the bank shall be issued, to the amount and for the periods fixed by royal decree of February 7, 1896. (See Alcubilla, Appendix 1896, p. 161.) The governing board of the bank shall determine such method as it may deem proper for effecting the issue.

ART. 26. Bank shares shall be transferable in all the ways known to the law, except the one thousand which were issued as nontransferable and inalienable, which shall retain their character so long as the corporations that possess them do not request their transfer (enajenacion), and His Majesty's Government direct the same. In order to attach shares, an order from competent authority shall be necessary.

ART. 27. A transfer of shares, whatever be the method of making the same, must be made to appear by a declaration made before a proper officer of the bank (administracion del banco) in person by the party transferring the same to another, or by a special attorney who shall sign in the register of said bank, showing said transfer, and, upon first presenting in the office of the bank the original certificate (titulo original de inscripcion), whereupon a new certificate will be issued to the transferee.

When the transfer of the ownership of shares is the result of hereditary succession, and there is but one heir, an affidavit (testimonia de la clausula de institucion), or the judicial decree declaring said heir to be the heir of the intestate, shall be presented at the bank so that he may be known as the successor to the ownership of the shares of his ancestor.

When there are many persons interested in the inheritance, the successor to the shares shall present, apart from the substitution or declaration of the heir, proof of his interest in the part claimed (parte necesaria).

ART. 28. The responsibility of stockholders for the transactions of the bank shall be restricted to the value of the shares possessed by them, in harmony with the provisions of the code of commerce relating to corporations (sociedades anonimas).

ART. 29. The bank shall not hold any more real property (bienes inmuebles) than is necessary for its service. It shall be allowed, nevertheless, to acquire real property adjudged to it in payment of debts when such debts can not be settled advantageously in any other way; but it should dispose of the same as soon as practicable.

TITLE III.—*Concerning the application and distribution of the profits of the bank.*

ART. 30. The profits or gains resulting from the operations of the bank, after deducting the expenses of administration, and, when proper, such part as corresponds to the legal reserve fund, shall be applied as follows: Ten per cent to the directors (direccion), and five per cent to the governing board (junta de gobierno); the same to be distributed in the manner provided in the by-laws (reglamento). The remaining eighty-five per cent shall belong as a whole to the stockholders, and shall be divided among them according to the number of shares held by each.

ART. 31. These profits shall be distributed in dividends, which shall be declared every semester, as follows: Should the liquidated, distributable profits not exceed eight per cent per annum on the par value of each share, the whole shall be distributed; should there be an excess over said eight per cent, it shall be divided one-half to the stockholders and one-half to the legal reserve fund mentioned in

article 24, until the same is completed; after which the surplus shall be divided amongst the stockholders, in whole or in part, or it may be used for the creation of the voluntary reserve fund, also mentioned in said article, as the governing board may deem best.

ART. 32. The balance sheet provided for in article 157 of the code of commerce shall be drawn up and published monthly.

TITLE IV.—*Concerning the government and administration of the bank.*

ART. 33. The high direction and supreme control of the bank shall be in the protector, the governor-general of the Philippine Islands, who may temporarily delegate his powers as protector, to such an extent as he may deem proper, to some person in his confidence who is a councillor of the administration (consejero de administracion), or who holds an administrative rank equivalent thereto.

ART. 34. The government and administration of the bank shall be conducted, subject to the supervision of the protector or of the person to whom he has delegated his powers, in accordance with article 33, by the general board of stockholders (junta general de accionistas), by the governing board (junta de gobierno), and the board of directors (una direccion), who shall have the powers granted them respectively by these statutes.

TITLE V.—*Concerning the authority of the protector and powers of the person to whom he temporarily delegates his duties.*

ART. 35. The following shall be the powers of the protector: First. The appointment of directors (directores), the secretary, and one of the sindics (sindicos) from among the three persons whose names may be submitted to him by the general board of stockholders. Second. To appoint, on his own motion, the other sindic, without the necessity of having such names so submitted. Third. To direct (determinar) the issue of shares. Fourth. To approve the rate of interest to be collected by the bank on discounts and loans made by it. Fifth. To suspend or discharge from their respective offices directors and voting members (vocales) of the governing board, when there is sufficient motive, or well-founded cause for doing so. Sixth. To decide in his capacity as governor such doubts and controversies as may arise concerning matters relating to the internal government of the bank, or the observance of the statutes and by-laws thereof. Seventh. To order the revision of the statutes and by-laws of the bank whenever he deems it proper, or on request of the general board of stockholders. Eighth. And finally, to exercise, as the representative of His Majesty's Government, the powers granted him by law with regard to protected and privileged public establishments.

ART. 36. The person to whom the protector delegates his powers, and in lieu thereof the director on duty (director de turno), shall have the following powers:

First. To call general meetings, both ordinary and extraordinary, upon motion to him by the governing board, for sufficient cause.

Second. To convene the governing board in extraordinary session whenever he deems it necessary, either on his own motion, or at the request of one of the sindics.

Third. To preside at the general meetings and at the meetings of the governing board, without vote.

Fourth. To direct the suspension, on motion of one of the sindics, of resolutions passed at the general meetings and by the governing board, when the same are not found to be in accord with the statutes and by-laws.

Fifth. To exercise a supervision over the entire bank service, and submit to the protector such recommendations and reports as he may deem proper concerning its condition, and proposing such alterations and modifications as he may deem necessary for the better management of the establishment.

Sixth. To be present at the making of the monthly inspection ("arqueo") and balance ("balance"), signing his approval of the same in the proper book.

Seventh. To draw up special reports requested of him by the protector concerning the business of the bank, making beforehand such inspections of the registers, documents, and papers of the establishment as he may deem necessary.

TITLE VI.—*Concerning the powers of the general board of stockholders.*

ART. 37. The stockholders of the bank shall be represented at the general meeting by those among them who are owners or beneficiaries of at least ten shares, inscribed in their favor three months before holding the meeting, and this shall be determined by reference to the registers of the establishment.

Stockholders may be represented at general meetings by proxies consisting of such persons as they may elect, whose appointment shall be made by executing power of attorney before a notary public. (Free.)

Stockholders who do not enjoy full legal capacity, such as married women, minors, etc., or possessing the character of legal entities, associations, corporations, etc., shall be represented at the general meetings and also in all other matters relating to the bank by their legal representatives.

ART. 38. The absence of stockholders from the general meetings shall deprive them of the right to contradict and oppose the action of the majority, provided that such action be not contrary to the provisions of these statutes.

ART. 39. Members present at the meeting who possess ten shares shall have one vote, those possessing twenty shares shall have two votes, but in no case shall any stockholder have more than two votes, be the number of shares possessed by him what it may.

ART. 40. The general meeting of the (stockholders of the) bank shall be regularly held on the third day of February of each year, and shall continue, if necessary, during the two following days, but no longer, except upon authority granted by the protector.

ART. 41. The general board (of the stockholders) of the bank shall have power: First. To appoint the councilors of the governing board. Second. To appoint the cashier from among three names submitted by the governing board. Third. To propose to the protector, through the directors of the bank (direccion del banco), three names each for

the positions of directors, secretary, and one of the sindics. Fourth. To inform themselves of the situation of the bank through a report which shall be presented by the governing board, and of the general balance of annual accounts which they shall see and examine. Fifth. To act on recommendations made by the governing board, relating to the better order and prosperity of the establishment, in accordance with the statutes and by-laws. Sixth. To draw up such statements as they may deem proper to be submitted to the protector concerning the improvements and reforms that might be made in the bank, the same to be transmitted through the director on duty (director de turno). Seventh. Every member of the general board (of stockholders) may present before said meeting, in writing, such suggestions as he may deem proper to the welfare of the bank, but such recommendations shall not be discussed until the next following meeting and until the action of the governing board thereon has been heard. Eighth. To direct the increase of the capital and the manner and conditions subject to which the same is to be made. Ninth. And to exercise the powers and attributes expressly given to them by these statutes and in the by-laws.

ART. 42. A general meeting (of the stockholders) of the bank may be convened in extraordinary session: First. When the number of members of the governing board has been reduced to one-third by death, or other legal impediment which may make it impossible for the members thereof to perform their duties. Second. Whenever one of the sindics shall request an extraordinary session for the purpose of considering grave and urgent matters of interest to all the stockholders, and the director on duty (director de turno) shall consider the same necessary.

ART. 43. The resolutions passed at the general meeting (of the stockholders) of the bank upon the matter of appointment of personnel will be had by secret vote and will require an absolute majority of votes. Should an election not be obtained on the first ballot, a second ballot will be taken on the persons who were voted for on the first ballot; and should none of these obtain a majority, a third ballot will be had on the two persons who obtained the greatest number of votes on the preceding ballot. In case of a tie, the senior (in age) candidate shall be held to be elected.

ART. 44. In transacting business of any other nature the vote of the meeting will be had in public, and a majority of the votes shall govern.

TITLE VII.—*Concerning the governing board* (*junta de gobierno*).

ART. 45. The governing board of the bank shall consist of two directors who shall be honorary members thereof, six councilors (conciliaros), and one sindic appointed upon the recommendation of the general board, and another sindic to be named by the protector. Members may be reelected to these positions.

ART. 46. The six councilors and the sindic appointed by the general board shall perform their duties, two councilors being added each year.

The sindic appointed by the Government (protector?) shall hold office for four years.

The directors shall hold office for two years, the senior member being replaced annually in accordance with the provisions of number one of article 35 and number three of article 41.

ART. 47. Members of the governing board must have on deposit in the vaults of the bank (en la caja) during their term of office at least ten shares of stock.

ART. 48. Both the councilors (conciliaros) and the sindics shall be entitled in respect of these offices to an attendance fee for all sessions held by the governing board. The allowance (cuota repartible) is fixed in article 30 herewith.

ART. 49. The duties of the governing board shall be (son): (1) To issue stock certificates (inscripciones de las acciones del Banco). (2) To determine (proponer) the number of bank notes to be issued. (3) To fix the percentage (premio) that shall be required on discounts and loans. (4) To draw up private lists (listas reservadas), in alphabetic order, of the firms which it considers creditable for discounts, setting forth the amount of credit to be extended to each one. (5) To appoint commissioners (comisionados) and correspondents (corresponsales), and to designate the points where they are to be stationed. (6) To direct the establishment of branch banks (succursales) at such points as are suitable both to the public interest and the bank, in accordance with article 17 of these statutes. (7) To approve, on the proposal of the directors (dirección), transactions had by the bank with State establishments (establecimientos del estado). (8) To see to it that in all the offices and dependencies of the bank the statutes, by-laws, orders, and resolutions in force are observed. (9) To examine at each session the operations of the directors (dirección) and the movement of the bank during the week. (10) To appoint, on recommendation of the directors (dirección), a bookkeeper and all the minor employees of the bank, and also all those of such branch banks as it may establish. (11) To suspend for grave and sufficient cause any employee of the bank, and to discharge such as are not appointed by the protector. (12) To draw up the annual report (memoria anual) concerning the operations of the bank, which shall be read before the general meeting. (13) To examine and audit the accounts to be made each year by the directors (dirección), and to present the general balance. (14) To declare every semester, in accordance with such balance and the state of the voluntary reserve fund, the dividend to be paid to the stockholders. (15) To examine into and take under advisement recommendations made by the members of the general board for the welfare of the bank, and present the same, with their report thereon, to the next general meeting. (16) To make, of its own motion, to said general meeting all suggestions that it deems proper for the extension and prosperity of the establishment.

ART. 50. The sindics shall only have a voice (voto consultivo) in the governing board, together with the following powers: (1) To make complaint concerning any abuse they may observe in the operations of the bank and in the management of its offices. (2) To examine and pass upon all reports, accounts, and balances of the bank. (3) To oppose the carrying out of resolutions passed by the governing board which are contrary to the statutes of the bank or prejudicial to its interests, and to make report to the director on duty (director de turno) for the purpose of having the same suspended, and to report to the protector when they consider it necessary. (4) To oppose at

all times the issue of a greater number of bank notes than the whole number authorized by these statutes.

All complaints made by the sindics shall be inscribed literally in the minutes of the governing board.

ART. 51. The sessions of the governing board shall be held whenever the director on duty (director de turno), of his own motion or at the request of one of the sindics, shall deem them necessary.

ART. 52. No action whatsoever shall be taken at the sessions of the governing board save when they are present at least four voting members and one of the sindics.

ART. 53. Resolutions of the governing board must be passed by a majority of the votes of the members present, and, in case of a tie, the opinion of the president-director on duty (presidente director de turno) shall decide.

ART. 54. The secretary of the bank shall be present at all the sessions of the governing board, without voice or vote, and shall draw up the minutes, which shall be signed by the president, one councilor, and the secretary himself.

TITLE VIII.—*Concerning the directors of the bank (direccion del banco).*

ART. 55. The administration of all the affairs of the bank and the control of its operations shall be in charge of the directors (directores), assisted by a secretary who shall perform such duties as they may direct. When by reason of sickness or absence of a director, or when there is a vacancy in this office, the governing board shall immediately submit, through the directors of the bank (direccion del banco), the names of three eligible persons, from amongst whom the protector shall appoint those who are to fill the office temporarily until the calling of the next general meeting of the stockholders.

ART. 56. Any person not exercising full ownership over twenty shares of stock deposited in the vaults (caja) of the establishment, shall not be allowed to hold office as a director of the bank. (Free.)

ART. 57. The directors shall receive the compensation designated in article 30, which shall be divided equally between them.

ART. 58. The powers of the directors of the bank shall be (son): (1) To direct all the operations of the bank and to give orders and instructions to all the employees thereof who are to take part in said operation. (2) To execute (celebrar) all contracts and perform all transactions undertaken by the bank in accordance with its statutes. (3) To arrange with the agents of the Government the exchange transactions (operaciones de giro) which the bank is to carry on, subject to the approval of the governing board. (4) To carry on with the authorities, public officials, and private corporations such correspondence of the bank as relate to its administration. (5) To authorize with their signatures all administrative acts, and obligations and documents issued by the bank. (6) To give their consent and approval to all discounts and loans that are to be made. (7) To institute all judicial proceedings that may be necessary for the collection of the debts (creditos), and the preservation of the rights of the bank, and to appear in court in the name thereof. (8) To propose to the governing board for its action the course to be pur-

sued in important business and transactions not provided for by these statutes. (9) To propose to the governing board a bookkeeper, and to make known to the same the individuals they consider suitable for the office of cashier, so that a list of three names may be prepared to present to the general meeting of stockholders, to which body pertains the right to appoint this employee. (10) To appoint all subordinate employees (dependientes) and servants of the bank. (11) To watch over, as the immediate heads of the establishment, the conduct of all its employees, important and otherwise, in the performance of their duties, and to temporarily suspend for just cause those who are delinquent therein, except the secretary, cashier, and bookkeeper, who can only be suspended by the governing board. (12) To call the regular general meetings and such extraordinary general meetings as may be proposed for sufficient cause by the governing board, and also to convene the governing board. (13) To preside over the general meetings and the meetings of the governing board, with a vote. (14) To order the suspension of the resolutions of the governing board on motion of one of the sindics when the same are found not to be in harmony with the statutes and by-laws. (15) To make visits of inspection throughout all the offices of the bank, and to address to the protector such recommendations as they may deem proper concerning its condition, proposing to him suitable alterations or modifications for the better government of the establishment. (16) To be present at the making of the monthly inspection and balance, signing their approval in the proper book. (17) To sign stock certificates (rubricar los titulos de inscripcion de acciones) and to authorize with their signatures notes issued payable to bearer. (18) To draw up special reports requested of them by the protector concerning the affairs of the bank, first making such inspection of the registers, documents, and papers of the establishment as they may deem necessary. (19) To examine the report to be made to the general meetings relative to the situation of the bank, and to visé the same before it is read to the meeting, requiring in advance such proofs of the correctness of its contents as they may deem necessary.

The powers designated in numbers 12, 13, and 14 shall not be exercised by a director so long as there is a delegate of the protector in office.

ART. 59. One of the directors shall represent the bank and he shall exercise the powers and have the attributes granted the directors (direccion) by article 58 of these statutes, and he shall authorize with his signature all the acts, contracts, and operations that may be made.

In the discharge of this duty both directors shall periodically take their turn.

ART. 60. In the case of any judicial proceeding (demanda judicial) other than for the collection of bank accounts (creditos del banco) the directors must first obtain the approval of the governing board before acting therein.

ART. 61. The directors shall be accountable (responsables) to the bank for all operations carried on by them beyond their powers, or contrary to the statutes, by-laws, and resolutions in force.

TITLE IX.—*Dissolution and winding up of the bank.*

ART. 62. The bank shall be dissolved (1) upon the expiration of the term of its life, except an extension be had; (2) upon the loss of one-half of the capital subscribed, in which case the governing board shall immediately call, within as short a period as possible, an extraordinary general meeting to report the condition of the bank.

The general board may direct that the bank shall continue, in which case it may determine the necessary steps to be taken to fix the status of the bank, provided those present and voting represent two-thirds of the capital.

ART. 63. A dissolution having been decided upon, the winding up of the bank's affairs shall be in charge of the governing board then in office, except said governing board should determine to appoint receivers (liquidadores especiales), in which case said receivers shall receive such compensation as the governing board may direct.

ART. 64. While the winding up of the affairs of the bank continues the powers of the general board shall remain intact.

This board shall specially have the power to approve the accounts of the receivership (liquidacion), and to give a discharge.

The amount realized after paying the debts and expenses shall be distributed pro rata amongst the stockholders.

TITLE X.—*General provisions.*

ART. 65. The bank shall not furnish any information concerning the funds in its possession on a current account, or on deposit, belonging to a given person, save by virtue of a judicial order.

ART. 66. Dividends declared and not called for within three years following the date upon which they were available shall draw in favor of the bank the interest specified for voluntary deposits in money, commencing from the expiration of said period.

ART. 67. Questions arising between the bank and one or more stockholders, or between stockholders and the governing board, shall be submitted to the decision of arbitrators (amigables componedores) appointed in accordance with the law of civil procedure, in accordance with the provisions of which said arbitration shall be had.

Approved by His Majesty, Madrid, July 14, 1897.

CASTELLANO,
Colonial Minister.

A true copy.

CABELLO,
Subdirector.

NEW STATUTES OF THE BANCO ESPAÑOL-FILIPINO.

AN ACT To confirm certain rights and franchises of the Banco Espanol-Filipino and to amend its statutes.

Whereas the Banco Español-Filipino is a bank incorporated under a charter granted by the Kingdom of Spain conferring certain privileges and rights upon the bank, and especially that of the exclusive right of issuing and circulating notes of the bank to an amount equal to three times its capital stock, which was authorized to be three million of pesos, equivalent to $1,500,000 American currency; and

Whereas the bank has a paid-in capital of 1,500,000 pesos and claims to have in addition an unimpaired surplus of 900,000 pesos; and

Whereas the bank has issued, and has now in circulation, its circulating notes amounting substantially to 1,500,000 pesos; and

Whereas the authorities of the bank contend that under the American sovereignty, by reason of the guaranty of the Treaty of Paris, they may exercise the same exclusive privilege with respect to circulating notes which was given them under the Spanish charter, and, therefore, that they may increase their capital stock to 3,000,000 pesos and issue notes to the amount of 9,000,000 pesos; and

Whereas the representatives of the bank contend that the Philippine government has violated the exclusive right of the bank above set forth in issuing so-called silver certificates secured by a deposit of similar pesos in the treasury of the islands; and

Whereas the Philippine government, while recognizing as valid the present circulation, has heretofore denied the right of the Philippine bank under its charter to issue notes equal to three times its capital stock, on the ground that such note-issuing franchise was an exercise of sovereign power which was not transmitted or guaranteed by the treaty of Paris, and has, therefore, imposed a prohibitory tax of 12 per cent on any notes issued beyond the actual paid-in capital stock of the bank, because of its belief that the certain payment or redemption of such notes will not be properly secured under the provisions of the Spanish charter; and

Whereas the bank now threatens to test in court the validity of its franchise and the validity of the prohibitory tax, and relies upon the action of the Congress of the United States in confirming a similar charter granted to the Bank of Porto Rico; and

Whereas the Philippine government has no objection to the issue of circulating notes by this bank to the extent permitted by the Spanish charter, provided only that it shall not be exclusive, and that proper provision shall be made for securing the redemption or payment of such notes:

Now, therefore, by way of compromise of the questions arising between the Banco Español-Filipino and the Philippine government in respect to its charter, and the rights already conferred thereby, the Philippine government, by virtue of the general powers conferred upon it under section 74 and other sections of the act of July 1, 1902, does hereby amend and confirm the Spanish charter of the Banco Espanol-Filipino as the same is hereinafter set forth: *Provided, however*, That nothing in this act shall affect the validity of acts done and rights and causes of action which have arisen under the existing statutes of said bank in its relations with individuals, firms, corporations, and associations in the conduct of the banking business, except that validity is hereby given to all acts heretofore performed by the bank which would otherwise be legal, and whose validity might be questioned by reason of the failure of the bank to comply with its statutes in regard to the participation of the government in the management of the bank: *And provided further*, That the charter and statutes of the bank hereinafter set forth by way of amendment and confirmation shall not take effect until the same shall be duly and in legal form accepted by the proper authorities of the bank representing the corporation.

ARTICLES OF INCORPORATION OF THE BANCO ESPANOL-FILIPINO.

TITLE I.—*Name, constitution, title, objects, domicile, and duration of the corporation.*

ARTICLE I.

That the Banco Espanol-Filipino, founded in 1851 by a joint stock company duly authorized to transact business, and reorganized by virtue of royal decree of February 7, 1896, shall hereafter be governed by these articles of incorporation.

ARTICLE II.

That the Banco Espanol-Filipino shall be a body corporate, with power to adopt a corporate seal, and shall have succession for the period herein provided; that its corporate existence shall be extended for twenty-five years from January 1, 1903. This period may be extended at the request of the majority of the stockholders of the bank, provided such request be made at least one year before the expiration of the twenty-five years mentioned. It may make contracts, sue and be sued, complain and defend, in any court of law or equity, as fully as a natural person.

ARTICLE III.

That the bank is authorized to change its name, by vote of the stockholders in general assembly, to "The Bank of the Philippine Islands."

ARTICLE IV.

The head office of the corporation shall be located in the city of Manila, but branches of the bank now established may be continued, and others may be established or discontinued in other parts of the Philippine Islands, subject to the approval of the governor-general

of the Philippine Islands, and agencies of such bank may be established in the United States and in foreign countries, subject to the approval of the governor-general of the Philippine Islands, and in accordance with the laws of the United States or such foreign countries.

ARTICLE V.

The bank is authorized to engage in the following classes of transactions:

1. Discounting bills of exchange whose maturity does not exceed six months and commercial promissory notes whose maturity does not exceed one year.

2. Making collections of drafts and other current negotiable paper and advancing money thereon.

3. Receiving deposits and opening current accounts in currency or upon the deposit of public, provincial, municipal, industrial, or railway securities issued by legally constituted corporations.

4. Receiving and caring for money deposited in trust, arising from legacies, voluntary and other trusts, and judicial decrees, or in any other manner.

5. Receiving in the same manner as under paragraph 4 gold and silver bars, jewelry with or without precious stones, and stocks and bonds and other securities issued by corporations.

6. Negotiating or drawing bills of exchange, whether domestic or foreign, under the formalities prescribed by the Code of Commerce as modified by the provisions of this act.

7. Dealing in gold and silver.

8. Making loans upon the security of deposit with the bank, as collateral, of precious metals, articles of commerce, products of the country, negotiable securities, and industrial and commercial bills which are easily and safely realized upon at any time: *Provided*, That all such loans shall be made under regulations established by the general board of directors. Such collateral securities shall be accepted only at a rate not exceeding three-fourths of their market or appraised value, except that when the person or legal entity to which a loan is to be made is, in the judgment of the general board of directors, sufficiently solvent, apart from the collateral furnished, loans may be made to the amount of ninety per cent of the market value of said collateral security, provided that said security is easily convertible into cash and the person to whom the advance is made is a client of the bank; but said person shall, upon the demand of the bank, pay in cash or deposit first-class securities to cover any depreciation in the market value of the securities furnished.

9. Making loans on bills of lading, when invoices and insurance policies satisfactory to the bank are attached thereto: *Provided*, That the amount of such loan shall not exceed three-fourths of the current market value of the articles covered by such bills of lading.

10. Granting current credit accounts in favor of clients who have been approved by the general board of directors, such accounts paying to the bank a commission upon the sums upon which they are entitled to draw, in addition to the interest upon amounts actually used.

11. Buying and selling or otherwise negotiating securities, and borrowing money upon securities owned by the bank.

12. Making loans upon real estate, when mortgage certificates running for a definite term can be sold for the amounts thus loaned; but the amount invested at any one time in such loans, or in any loans upon real estate security, shall not exceed twenty per centum of the capital of the bank, and if such investments are now in excess of that sum they shall be reduced as rapidly as the interests of the bank are deemed to justify, under the direction of the treasurer of the Philippine Islands.

13. Making loans upon vessels which are insured and free from encumbrance, provided such loans do not exceed half the value of the ship nor run for more than one year. Such loans shall not exceed ten per centum of the paid-up capital of the bank.

14. Making loans to firms and corporations established in the Philippine Archipelago and which, in the opinion of the general board of directors, are of undoubted solvency, provided such loans shall not exceed ninety days in duration.

15. Undertaking on commission the purchase and sale of securities and such other banking operations, under regulations established by the general board of directors, as may be within the incidental powers of a bank; but no powers shall be exercised which are not expressly granted by this act if such exercise is prohibited by the governor-general of the Philippine Islands.

16. Preparing, issuing, and circulating bank notes under the provisions of this act.

Article VI.

The bank shall not make any loan or discount on the security of the shares of its own capital stock, nor be a purchaser or holder of any such shares, unless such security or purchase shall be necessary to prevent loss upon a debt previously contracted in good faith; and stock so purchased or acquired shall be sold or disposed of at public or private sale within six months from the time it is acquired.

Article VII.

All notes and bills of exchange discounted by the bank must bear at least two signatures of known solvency, one of which must be a resident of the locality of the transaction and must comply in other respects with the provisions of the code of commerce, except that such transactions may, with the approval of the president of the bank, be for a longer period than ninety days, and one signature may be dispensed with when loans are made on negotiable securities, as provided by paragraph eight of Article V.

Warrants or drafts drawn by the treasurer of the Philippine Islands or of the United States may be accepted without the signatures and conditions required in the case of private parties.

Article VIII.

The total liabilities to the bank of any person, or of any company, corporation, or firm, for money borrowed, including in the liabilities of a firm the liabilities of the several members thereof, shall at no time exceed one-tenth of the amount of the capital stock of the bank, actually paid in and unimpaired, and one-tenth part of its unim-

paired surplus fund; but the discount of bills of exchange drawn in good faith against actually existing values, and the discount of commercial or business paper actually owned by the person negotiating the same shall not be considered as money borrowed.

ARTICLE IX.

Before making loans on precious metals, merchandise, and goods in warehouse, the value of the same shall be appraised by experts appointed by the officers of the bank, but the bank shall not be liable for any loss, damage, deterioration, or shortage of or to the merchandise so stored, except in cases arising from its default or negligence.

ARTICLE X.

All real property upon which mortgage loans are made must have a marketable title and be free from all encumbrances and liens.

Buildings, if city property, must be constructed of substantial material; and in all cases the buildings or improvements upon such real estate shall be insured to at least 75 per centum of their value, and no loans shall be made on real estate to an amount greater than 50 per centum of the value thereof.

ARTICLE XI.

Merchandise specified in a bill of lading upon which a loan is made by the bank must be consigned to such person as the bank shall designate at the place of destination, who may deduct the current commissions and charges, and shall comply with the orders of the shipper as to the sale or disposition of the property, and pay the proceeds thereof to the bank to the amount of its loan, charges, and expenses.

In case of loss of merchandise, the bank may proceed, at its option, against the shippers or carriers thereof for the amount of the loan, with all charges and expenses, or against the insurance company insuring the same for the amount of such insurance.

ARTICLE XII.

Upon deposits made in the bank of precious metals or merchandise, other than money in current account, the bank shall furnish to the depositor a certificate containing the following particulars:

First. The name and domicile of the depositor or of the authority ordering the deposit.

Second. The nature and value of the deposit, and where it consists of bars or jewelry of gold or silver, the weight and specific qualities thereof.

Third. The date of the deposit and the entry number in the proper books of the bank.

ARTICLE XIII.

The officers of the bank shall, within the limitations of this act, be exclusive judges as to the acceptance or refusal of drafts, notes, and bills of exchange submitted for discount, and of all applications for loans and of other business transactions.

ARTICLE XIV.

The rates of interest on discounts and loans, on deposits, collections, mortgages, etc., shall be fixed every six months by the general board of directors, with the approval of the president of the bank, and such rates, if not contrary to law, shall be those charged in cases where no specific agreement is made, but the bank may change such rates, from time to time, upon notice of one week, and may make other rates by agreement of both parties. All expenses connected with the transaction, including the fees of appraisers, shall be charged to the borrower.

ARTICLE XV.

The bank may order the sale of collateral security in its custody, consisting of securities or merchandise, or any other thing, three days after having called upon the debtor, by written notice, to increase the amount of such security, if in the meantime he has failed to comply with such request, or after the maturity of a loan if the loan has not been paid. These sales shall be made at public auction, with the assistance of a notary or exchange agent or broker, and without the requirement of any judicial order or process; and in order to avoid delay or difficulty in the disposal of such collateral security, and that the bank may accomplish the sale without interference on the part of the debtor, it shall set forth in the note or evidence of indebtedness that the collateral security given is to be considered as transferred to the bank without any further formality by the fact of delivery, under the conditions set forth therein.

All such securities registered in the name of the owner shall be transferred in due form to the bank, which shall issue therefor a receipt setting forth the terms of the delivery and the purposes for which such transfer has been made.

If the proceeds of the sale of such securities do not cover the full amount of the loan, together with interest and other charges thereon, the bank may proceed against the debtor for the difference, but any amount exceeding the full indebtedness to the bank shall be paid over to the debtor.

Parties obtaining loans on bills of lading must increase the amount of security with the bank whenever a fall of ten per centum takes place in the market value of the merchandise, and if upon maturity of the loan the amount has not been paid or the vessel has not arrived with the merchandise constituting such security, the bank may, at its option, proceed against the debtor or await the arrival of the vessel, in order to make a sale of such merchandise, with the understanding that if the bank shall elect the former remedy, such action shall not impair the right of the bank to proceed against the security itself at such time and in such manner as it may deem proper.

TITLE II.—*Concerning capital stock and shares.*

ARTICLE XVI.

The bank may increase the amount of its capital stock from time to time to a total amount not exceeding ten million pesos, by a vote of a majority in amount of the stock, at a meeting of the general assembly of the stockholders, by the bona fide sale of new stock for not

less than par in cash, and such increase of capital shall be valid only when the whole amount of such increase shall be paid in and notice thereof shall have been transmitted to the treasurer of the Philippine Islands and his certificate obtained specifying the amount of such increase of capital stock, with his approval thereof, and that it has been duly paid in as part of the capital of the bank.

ARTICLE XVII.

The existing capital and any increase of the same which may be made shall be represented bv shares of the face value of 200 pesos each.

ARTICLE XVIII.

In case of an increase of the capital stock by authority of a general assembly of the stockholders, the shares shall be issued upon the payment in full of the price therefor, to be fixed by the bank, not less than 200 pesos for each share, plus such percentage as corresponds to the ratio of the reserve funds or surplus then on hand and unimpaired to the aggregate amount of the capital after such increase of capital.

ARTICLE XIX.

The bank shall maintain a reserve fund or surplus of not less than fifteen per centum of its capital stock issued and outstanding, which fund shall be subject to the same obligations as capital, and shall be made up of the net profits resulting from the operations of the bank after deducting the dividends paid upon capital.

The bank may create an additional reserve fund for the purpose of distributing dividends when the amount actually earned in any year does not reach six per centum of the capital stock, but this fund shall not be applied to the increase of the capital stock of the bank.

ARTICLE XX.

The ownership of the shares of the capital of the bank shall be recorded in the name of a person, corporation, or other legal entity in the register of the bank, and registered stock certificates shall be issued to the record owners thereof. New issues of capital shall be registered in the same manner, under regulations to be made by the general board of directors.

ARTICLE XXI.

Shares of the capital stock may be transferred by a declaration made in person before a proper officer of the bank by the party transferring the same, or by some one having power of attorney to sign said register, upon first presenting to the bank the original certificate, for which, upon cancellation, a new certificate will be issued.

ARTICLE XXII.

That the stockholders of the bank shall be subject to no other or additional liability than the amount which they shall have paid or bound themselves to contribute in payment for the shares standing in their names, not exceeding the face value of said shares.

ARTICLE XXIII.

Stock in the bank may be held by persons and corporations without regard to domicile, and officers and directors may be chosen without regard to nationality, except that a majority of the board of directors shall be made up of citizens of the United States or of the Philippine Islands; but money in current account and securities and other articles of value deposited in the bank which is the property of foreigners shall not be subject to attachment, confiscation, or seizures because of war between their respective nations, except as such processes would lie in the ordinary course of law against citizens of the United States or of the Philippine Islands.

TITLE III.—*Concerning the issue of circulating notes.*

ARTICLE XXIV.

That the circulating notes of the bank shall hereafter be issued under the following limitations of amount and conditions:

(*a*) To a present amount not exceeding two million four hundred thousand pesos, which shall represent the paid up and unimpaired capital of the bank and the value of the surplus as ascertained by the governor-general of the Philippine Islands; and in case such capital and surplus shall not, in the opinion of the governor-general of the Philippine Islands, be equal in value to the amount of circulation herein authorized, then said governor-general may require a contraction of such circulation until it shall not exceed the value of the capital and surplus of the bank or the deposit with the treasurer of the Philippine Islands of commercial paper conforming to the statutes of the bank and acceptable to the governor-general, for any excess in the amount of circulation above the value of the capital and surplus as ascertained and determined by him: *Provided, however,* That as a condition precedent of issuing notes to the extent of the paid up and unimpaired capital of the bank and the value of the surplus as ascertained by the governor-general as above permitted said surplus shall be formally treated as a part of the capital of the bank and shares of stock issued therefor to the persons entitled thereto. And said bank is hereby authorized to issue its circulating notes, secured by its capital as herein provided, in equal proportion with each increase of paid in capital stock in cash, not exceeding nine million pesos; and all notes so issued shall be governed by the provisions of this section.

(*b*) To a present additional amount not exceeding six hundred thousand pesos upon deposit with the treasurer of the Philippine Islands of bonds of the United States, bonds or certificates of the government of the Philippine Islands, bonds of the city of Manila, stock or bonds of railways or mortgage banks upon which interest or principal has been guaranteed by the government of the Philippine Islands, or other securities acceptable to the governor-general of said Philippine Islands, and the percentage of circulation to be allowed upon the face value or market value of each of said class of securities shall be determined by said governor-general of the Philippine Islands. Such notes may be issued at the discretion of the bank, subject only to the condition that the securities deposited shall be

acceptable in character and amount to the governor-general of the Philippine Islands, and without regard to whether issues have been made or applied for under other provisions of this act. And in case of the increase of the paid up and unimpaired capital of the bank from two million four hundred thousand pesos to three million pesos the treasurer of the Philippine Islands shall deliver to the bank the securities deposited with him to cover circulating notes under this paragraph (*b*).

It being the intention that the total circulating notes issued under this act shall never exceed in amount nine million pesos, representing an equal amount of the paid up and unimpaired capital of the bank.

Article XXV.

All outstanding notes of the bank shall, after January 1, 1908, constitute a preferred lien upon the assets of the bank, except as to such securities as have been specifically deposited under special agreements with public officials for the safe-keeping of public moneys; and any bonds or other securities deposited with the treasurer of the Philippine Islands, as hereinbefore provided, for the security of the circulating notes of the bank, shall be held exclusively for that purpose until such notes shall be redeemed; but the treasurer of the Philippine Islands shall give to the bank powers of attorney to receive and appropriate to its own use the interest and dividends on such securities in the custody of said treasurer; but such powers shall become inoperative whenever the bank shall fail to redeem its circulating notes, and said treasurer of the Philippine Islands, under regulations prescribed by the governor-general, may permit or require an exchange to be made of any of the securities in his custody.

Article XXVI.

The bank shall be held to renounce all claim to the exclusive privilege of issuing notes in the Philippine Islands, or to any other exclusive privilege not set forth in this act; but no laws or regulations shall be made or enforced affecting the bank, or imposing charges or taxation upon it, which shall not apply equally to other banks of a similar type operating under similar conditions, and no bank shall be authorized to issue circulating notes in the Philippine Islands with a paid-up capital less than two million pesos; but this provision shall not preclude the government from granting special privileges to agricultural banks, savings banks, mortgage banks, or other institutions of special types whose principal business is not commercial banking.

Article XXVII.

That the treasurer of the Philippine Islands, and all assistant treasurers and provincial and municipal treasurers and other public officials, shall be directed to receive the circulating notes of the bank for public dues so long as said circulating notes are paid in the lawful money of the Philippine Islands or of the United States, without discount and on demand, at the bank and its branches.

ARTICLE XXVIII.

That the notes issued under the provisions of paragraph (*a*) of Article XXIV of this act shall pay a tax at the rate of one-half of one per centum per annum; and the notes temporarily issued under the provisions of paragraph (*b*) of said Article XXIV of this act shall pay a tax at the rate of one per centum per annum, such taxes to be assessed upon the amount of notes actually in circulation and not held in the bank or its branches, at fixed intervals not less frequently than once a month, to be determined by regulations made by the treasurer of the Philippine Islands.

ARTICLE XXIX.

That whenever the bank desires to withdraw circulating notes which are not in its possession it may deposit with the treasurer of the Philippine Islands in the lawful money of the Philippine Islands or of the United States an amount equal to the face value of the circulating notes which are to be withdrawn and retired, and if such notes are represented by securities in the custody of said treasurer he may surrender such portion of said securities as, in his opinion, will represent a just proportion of the securities held to secure circulating notes, and thereupon the taxes imposed by this act upon circulating notes shall cease upon an amount thereof equal to the amount of lawful money deposited, and such lawful money shall be repaid from time to time to the bank upon the presentation and surrender to said treasurer of the Philippine Islands of notes which have been received or redeemed.

ARTICLE XXX.

That the circulating notes of the bank may be issued in denominations of 5 pesos, 10 pesos, 20 pesos, 50 pesos, 100 pesos, and 200 pesos, and shall express upon their face the promise of the bank to redeem them on demand in lawful money of the Philippine Islands or of the United States, attested by the signatures of the president or vice-president and cashier.

ARTICLE XXXI.

That the bank shall at all times have on hand, in lawful money of the Philippine Islands or of the United States, an amount equal in value to at least 25 per centum of the aggregate amount of its notes in circulation and in adition thereto 20 per centum of its deposits in current accounts which are payable on demand; provided, however, that this requirement shall not apply to the notes issued under paragraph (*b*), Article XXIV above.

ARTICLE XXXII.

That the circulating notes of the bank shall hereafter be issued to the bank by the treasurer of the Philippine Islands, who shall make requisitions upon the Bureau of Insular Affairs, at Washington, for such a supply as may be necessary to anticipate reasonable demands,

and he shall keep such notes in his custody in the treasury of the Philippine Islands; but said notes shall not have validity as currency until the seal of the bank and the signatures of its officers duly authorized to perform such functions are attached.

TITLE IV.—*Concerning the powers of the general assembly of the stockholders.*

ARTICLE XXXIII.

The stockholders of the bank shall be represented at its general assembly by those among them who are owners of, or who represent, at least ten shares of the capital stock registered in their names at least two months before the meeting as shown by the registered list of stockholders.

Stockholders may be represented at general meetings by proxies designated by them, but the appointment of such proxies shall be valid only when proper power of attorney is executed before a notary public.

Stockholders not possessing full legal capacity, as married women, minors, et cetera, or possessing the character of corporations, associations, or other legal entities, shall be represented at the general meetings and in all other matters relating to the bank by their legal representatives.

ARTICLE XXXIV.

One vote in the general assembly of the stockholders shall be allowed each ten shares of the capital of the bank actually represented by the owner thereof or by duly authorized proxy.

ARTICLE XXXV.

The general assembly of the stockholders of the bank shall be held on the second Tuesday of February in each year, and may be adjourned from day to day until its business is concluded.

ARTICLE XXXVI.

The general assembly of the stockholders shall have the following powers:

1. To elect the members of the general board of directors.
2. To inform themselves of the condition of the bank through a report presented annually, or oftener, by the general board of directors, and through the annual general balance sheet.
3. To act on recommendations made by the general board of directors relating to the interests of the bank, in conformity with the statutes and by-laws.
4. Any member of the general assembly of the stockholders may present to said general assembly in writing such suggestions as he may deem proper for the welfare of the bank, but such recommendations shall not be acted upon until the next following meeting, nor until the general board of directors has passed upon them.

5. To authorize the increase of the capital stock and prescribe the manner and conditions under which it shall be made, subject to the provisions of this act.

6. To exercise any other powers expressly granted by or reasonably to be implied from these statutes and the by-laws of the bank, and not in conflict with this act.

ARTICLE XXXVII.

A general assembly of the stockholders of the bank may be convened in extraordinary session whenever the number of members of the general board of directors has been so reduced as to make it impossible for the members thereof to perform their duties, or whenever five members of the general board of directors shall so request, and the object of such meeting shall be stated in the call.

ARTICLE XXXVIII.

In choosing the directors of the bank, at the general assembly of the stockholders, an absolute majority of votes cast shall be required to make a choice, and the vote shall be taken by secret ballot.

TITLE V.—*Powers of the board of directors.*

ARTICLE XXXIX.

The direction of the bank shall be under the control of a general board of directors, who shall choose a president, vice-presidents, a cashier, and such other officers as they may deem expedient, and said general board of directors may fix the salaries of such officials at such amounts as they may deem proper.

ARTICLE XL.

The general board of directors of the bank shall consist of the president and vice-presidents, not exceeding five in number, who shall be members of the board ex officio, and not less than eleven nor more than twenty-five directors chosen annually by the stockholders in general assembly. Members of the board shall be eligible for reelection.

ARTICLE XLI.

There may be elected by the general assembly of the stockholders, at its discretion, associate directors of branches in the Philippine Islands, in the United States, or in foreign countries, who shall, under regulations made by the general board of directors, meet separately from said general board to consider matters relating to the interests of the branch for which they are elected, but their action shall be advisory only and shall be subject to the approval of the general board of directors at Manila. Such associate directors may or may not, in the discretion of the general assembly, be required to be stockholders in the bank, and shall be subject to removal or termination of their functions at any time upon vote of said general assembly.

Article XLII.

Each member of the general board of directors, in order to be eligible as a member, shall deposit with the bank, in trust, before assuming his duties not less than ten shares of the stock of the bank registered in his name. Each such director when appointed or elected shall take an oath that he will, so far as the duty devolves upon him, diligently and honestly administer the affairs of the bank, and that he will not knowingly violate, or willingly permit to be violated, any of the provisions of this act, which oath, subscribed by himself and certified by the officer before whom it is taken, shall be immediately transmitted to the treasurer of the Philippine Islands and by him filed and preserved in his office.

Article XLIII.

Members of the board of directors, except the president and vice-presidents of the bank, shall be entitled to a fee for attendance at meetings of said board, which shall be fixed by the general board, but shall not exceed 25 pesos.

Article XLIV.

The duties of the general board of directors shall be as follows:

1. To supervise the issue and transfer of certificates of stock and establish regulations therefor.
2. To determine from time to time the number and amount of circulating notes to be issued under the provisions of this act.
3. To fix the rate of discounts and loans.
4. To prepare confidential lists of the firms and corporations to which it considers discounts may properly be accorded, fixing the amount of credit to be extended to each.
5. To appoint agents and correspondents and to designate the points where they are to be stationed.
6. To authorize the establishment of branch banks at such points as will serve the public interest and that of the bank, in accordance with Article IV of these statutes.
7. To ratify, if satisfactory to it, transactions between the bank and the government and other current transactions.
8. To take care that in all the offices of the bank the statutes, by-laws, orders, and resolutions in force are strictly observed.
9. To examine and consider, at each regular meeting, the transactions of the officers of the bank and the operations of the bank.
10. To elect the president, vice-presidents, secretary, and cashiers of the bank.
11. To appoint, on recommendation of the officers of the bank, bookkeepers and minor employees of the bank and of its branches.
12. To remove or suspend employees of the bank, with or without the recommendations of the officers.
13. To draw up the annual report concerning the operations of the bank, which shall be read at the general assembly of the stockholders.
14. To examine and audit the accounts submitted by the officers and to approve the general balance sheet.

15. To declare semiannually, in accordance with such balance sheet and the state of the voluntary reserve fund, the dividend to be paid to the stockholders.

16. To examine into and take under advisement recommendations made by stockholders in general assembly for the welfare of the bank, and to present the same, with their report thereon, to the next general assembly.

17. To make, of its own motion, to said general assembly all suggestions which it deems proper for the advantage of the bank.

Article XLV.

No action shall be taken at the sessions of the general board of directors except when a majority is present.

Article XLVI.

Resolutions of the general board of directors must be passed by the votes of a majority of the members present.

Article XLVII.

The secretary of the bank shall be present at all the sessions of the general board of directors, without voice or vote, and shall draw up the minutes, which shall be signed by the president and the secretary himself.

Title VI.—*Concerning the officers of the bank.*

Article XLVIII.

The administration of all the affairs of the bank and the control of its operations shall be in charge of the president, assisted by two or more vice-presidents and a secretary, who shall perform such duties as the president may direct.

Article XLIX.

The officers of the bank shall receive, in addition to their salaries, the compensation hereinafter set forth, which shall be divided as prescribed by the general board of directors.

Article L.

The powers of the president of the bank shall be:

1. To direct all the operations of the bank and to give orders and instructions to all the employees thereof who are to take part in said operations.

2. To execute all contracts entered into on behalf of the bank, and to perform all other duties customarily incident to his office.

3. To authenticate by his signature all administrative acts and obligations and documents issued by the bank.

4. To consider and pass upon applications for discounts and loans.

5. To institute and prosecute, in the name of the bank, all judicial proceedings that may be necessary for the collection of debts due to the bank and for the preservation of its rights.

6. To make recommendations to the general board of directors in regard to transactions not provided for by these statutes.

7. To recommend to the general board of directors the appointment of all subordinate employees and servants of the bank.

8. To supervise and direct the conduct of the employees of the bank in the performance of their duties and to temporarily suspend for just cause those who are delinquent therein, except those officials elected by the general board of directors, who can only be suspended by said board.

9. To call the regular general assemblies of the stockholders and such extraordinary general assemblies as may be requested by a sufficient number of the general board of directors.

10. To convene the general board of directors in extraordinary session whenever he deems it necessary, either upon his own motion or at the request of any three members of said board.

11. To preside at general assemblies of the stockholders and meetings of the general board of directors, with a vote.

12. To make visits of inspection to the offices of the bank and to address to the general board of directors such recommendations as he may deem proper concerning its condition.

13. To verify the monthly balance sheet and to sign his approval of the same in the records of the bank.

14. To sign stock certificates and to certify by his signature notes issued payable to bearer.

15. To examine the report to be made to the general assembly relative to the condition of the bank and to approve the same before it is read to the meeting, satisfying himself in advance of the correctness of its contents.

ARTICLE LI.

That in the absence or disability of the president, the vice-presidents, in the order designated by the general board of directors, shall exercise the powers herein granted to the president.

ARTICLE LII.

In the case of any judicial proceedings other than for the collection of obligations to the bank, the officers must obtain the approval of the general board of directors before acting therein.

ARTICLE LIII.

The officers shall be personally accountable to the bank for all operations carried on by them beyond their powers or contrary to the statutes, by-laws, and regulations of the bank.

TITLE VII.—*General provisions.*

ARTICLE LIV.

It shall be lawful for the bank to purchase, hold, and convey real estate as follows:

1. Such as shall be necessary for its immediate accommodation in the transaction of its business.

2. Such as shall be mortgaged to it in good faith by way of security for debts previously contracted.

3. Such as shall be conveyed to it in satisfaction of debts previously contracted in the course of its dealings, under the limitations hereinbefore imposed.

4. Such as it shall purchase at sales under judgments, decrees, or mortgages held by the bank, or shall purchase to secure debts due to it.

The bank shall not purchase or hold real estate in any other case or for any other purpose than as specified in this article, nor shall it hold for a longer period than five years the possession of any real estate under mortgage or the title and possession of any real estate purchased to secure any debts due to it.

ARTICLE LV.

The profits or net earnings resulting from the operations of the bank, after deducting the expenses of administration and such portion as corresponds to the legal reserve fund, shall be applied as follows: Ten per centum to the executive officers of the bank, to be divided according to regulations prescribed by the General Board of Directors; five per centum to the members of the General Board of Directors, to be distributed in the manner provided in the by-laws. The remaining eighty-five per centum shall belong to the stockholders, but may be added to the regular or special reserve funds or distributed as dividends at a fixed pro rata amount according to the number of shares.

ARTICLE LVI.

The distribution of dividends shall be made at least once in each six months when in the judgment of the General Board of Directors earnings justify the declaration of a dividend. Should the profits not exceed six per centum per annum on the par value of each share, the entire amount shall be distributed; should there be an excess over said six per centum it shall be divided, two-thirds to the stockholders and one-third to the legal-reserve fund mentioned in Article XIX until said reserve fund shall amount to not less than twenty-five per centum of the capital stock, after which any surplus shall be divided amongst the stockholders in whole or in part, or may be used for the creation of the voluntary reserve fund also mentioned in said article as the General Board of Directors may deem best.

ARTICLE LVII.

Dividends declared and not called for within three years following the date upon which they are due and payable shall draw the interest specified for voluntary deposits in money, commencing from the expiration of said period.

ARTICLE LVIII.

No information shall be furnished by the bank concerning the
ls in its custody in a current account, or on deposit, belonging
iven person, corporation, or other legal entity, except under au-
y of an order of the governor-general or of a court with
diction.

ARTICLE LIX.

That the treasurer of the Philippine Islands, provincial and municipal treasurers, and other authorized public officials shall, from time to time, deposit with the bank and its branches, upon such terms as may be prescribed by the government of the Philippine Islands, such public moneys and trust funds as may be available for this purpose, without discrimination against the bank or in favor of other institutions; but this clause shall not bind such officials to make or maintain such deposits when, in their opinion, it is inadvisable.

ARTICLE LX.

The balance sheet provided for in article 157 of the Code of Commerce shall be drawn up and published monthly, and the bank and its branches shall make to the treasurer of the Philippine Islands not less than five reports during each and every year, according to the form which may be prescribed by him, verified by the oath or affirmation of the president or cashier of the bank and attested by the signature of at least three of the directors; which report shall exhibit, in detail and under appropriate heads, the resources and liabilities of the bank at the close of business on any past day specified by said treasurer, and shall transmit such report to him within five days after the receipt of a request or requisition therefor from him; and the report above required, in the same form in which it is made to the treasurer, shall be published, at the expense of the bank, in a newspaper in the city of Manila; and the treasurer of the Philippine Islands shall have power to call for special reports of the condition of the bank and its branches whenever, in his judgment, the same shall be necessary in order to a full and complete knowledge of its condition. Failure to make and transmit such a report shall render the bank liable to a penalty of 100 pesos for each day after five days that said bank or any of its branches shall delay to make and transmit any report as aforesaid; these reports shall be in lieu of the quarterly reports prescribed by section one of Act No. 52 of the Philippine Commission of November 23, 1900, which quarterly reports shall no longer be required from the bank.

ARTICLE LXI.

That the government of the Philippine Islands renounces all rights which it may have derived under Spanish law to appoint the governor and other officers of the bank or to interfere in any way with its administration, except to make examination of its solvency and supervise its conduct in the interest of the public in the same manner as such examination and supervision are or may be exercised over national banks in the United States and as prescribed by the laws of the Philippine Islands.

ARTICLE LXII.

That the government of the Philippine Islands renounces all right and title derived from Spanish law and existing statutes of the bank to a loan of any money to the treasury of the Philippine Islands.

2. Such as shall be mortgaged to it in good faith by way of security for debts previously contracted.

3. Such as shall be conveyed to it in satisfaction of debts previously contracted in the course of its dealings, under the limitations hereinbefore imposed.

4. Such as it shall purchase at sales under judgments, decrees, or mortgages held by the bank, or shall purchase to secure debts due to it.

The bank shall not purchase or hold real estate in any other case or for any other purpose than as specified in this article, nor shall it hold for a longer period than five years the possession of any real estate under mortgage or the title and possession of any real estate purchased to secure any debts due to it.

ARTICLE LV.

The profits or net earnings resulting from the operations of the bank, after deducting the expenses of administration and such portion as corresponds to the legal reserve fund, shall be applied as follows: Ten per centum to the executive officers of the bank, to be divided according to regulations prescribed by the General Board of Directors; five per centum to the members of the General Board of Directors, to be distributed in the manner provided in the by-laws. The remaining eighty-five per centum shall belong to the stockholders, but may be added to the regular or special resrve funds or distributed as dividends at a fixed pro rata amount according to the number of shares.

ARTICLE LVI.

The distribution of dividends shall be made at least once in each six months when in the judgment of the General Board of Directors earnings justify the declaration of a dividend. Should the profits not exceed six per centum per annum on the par value of each share, the entire amount shall be distributed; should there be an excess over said six per centum it shall be divided, two-thirds to the stockholders and one-third to the legal-reserve fund mentioned in Article XIX until said reserve fund shall amount to not less than twenty-five per centum of the capital stock, after which any surplus shall be divided amongst the stockholders in whole or in part, or may be used for the creation of the voluntary reserve fund also mentioned in said article as the General Board of Directors may deem best.

ARTICLE LVII.

Dividends declared and not called for within three years following the date upon which they are due and payable shall draw the interest specified for voluntary deposits in money, commencing from the expiration of said period.

ARTICLE LVIII.

No information shall be furnished by the bank concerning the funds in its custody in a current account, or on deposit, belonging to a given person, corporation, or other legal entity, except under authority of an order of the governor-general or of a court with jurisdiction.

Article LIX.

That the treasurer of the Philippine Islands, provincial and municipal treasurers, and other authorized public officials shall, from time to time, deposit with the bank and its branches, upon such terms as may be prescribed by the government of the Philippine Islands, such public moneys and trust funds as may be available for this purpose, without discrimination against the bank or in favor of other institutions; but this clause shall not bind such officials to make or maintain such deposits when, in their opinion, it is inadvisable.

Article LX.

The balance sheet provided for in article 157 of the Code of Commerce shall be drawn up and published monthly, and the bank and its branches shall make to the treasurer of the Philippine Islands not less than five reports during each and every year, according to the form which may be prescribed by him, verified by the oath or affirmation of the president or cashier of the bank and attested by the signature of at least three of the directors; which report shall exhibit, in detail and under appropriate heads, the resources and liabilities of the bank at the close of business on any past day specified by said treasurer, and shall transmit such report to him within five days after the receipt of a request or requisition therefor from him; and the report above required, in the same form in which it is made to the treasurer, shall be published, at the expense of the bank, in a newspaper in the city of Manila; and the treasurer of the Philippine Islands shall have power to call for special reports of the condition of the bank and its branches whenever, in his judgment, the same shall be necessary in order to a full and complete knowledge of its condition. Failure to make and transmit such a report shall render the bank liable to a penalty of 100 pesos for each day after five days that said bank or any of its branches shall delay to make and transmit any report as aforesaid; these reports shall be in lieu of the quarterly reports prescribed by section one of Act No. 52 of the Philippine Commission of November 23, 1900, which quarterly reports shall no longer be required from the bank.

Article LXI.

That the government of the Philippine Islands renounces all rights which it may have derived under Spanish law to appoint the governor and other officers of the bank or to interfere in any way with its administration, except to make examination of its solvency and supervise its conduct in the interest of the public in the same manner as such examination and supervision are or may be exercised over national banks in the United States and as prescribed by the laws of the Philippine Islands.

Article LXII.

That the government of the Philippine Islands renounces all right and title derived from Spanish law and existing statutes of the bank to a loan of any money to the treasury of the Philippine Islands.

TITLE VIII.—*Dissolution and winding up of the bank.*

ARTICLE LXIII.

The bank shall be dissolved, (1) upon the expiration of its legal term unless legally extended in accordance with the provisions of this act, (2) upon the loss of one-half of the capital subscribed, in which case the general board of directors shall immediately call, within as short a period as possible, an extraordinary general assembly of the stockholders to report the condition of the bank.

The general board of directors may direct that the bank shall continue, in which case it may determine the necessary steps to be taken to fix the status of the bank, provided those present and voting represent two-thirds of the capital.

ARTICLE LXIV.

A dissolution having been decided upon, the winding up of the bank's affairs shall be in charge of the general board of directors then in office, unless said general board shall determine to appoint receivers, in which case said receivers shall receive such compensation as said general board may direct.

ARTICLE LXV.

While the winding up of the affairs of the bank continues the powers of the general board shall remain intact.

The board shall specially have the power to approve the accounts of the receivership and to give a discharge.

The amount realized, after paying the debts and expenses of the bank, shall be distributed pro rata among the stockholders.

ARTICLE LXVI.

That nothing in this act shall be held to prevent the exercise by the governor-general and the treasurer of the Philippine Islands of the powers conferred upon them by Act Number 556 of the Acts of the Philippine Commission, enacted December 9, 1902, or such amendments of that act as may hereafter be enacted.

ARTICLE LXVII.

(Customary enacting clause, to take effect at once.)

I approve.

WM. H. TAFT,
Secretary of War.

JULY 1, 1907.

Approved:

JEREMIAH J. HARTY,
Archbishop of Manila.
(Through his agent, FESTUS J. WADE.)

ST. LOUIS, MO., *July 10, 1907.*

[PUBLIC RESOLUTION—No. 32.]

JOINT RESOLUTION To authorize and empower the Banco Español de Puerto Rico (Spanish Bank of Porto Rico) to amend its by-laws.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the Banco Español de Puerto Rico (Spanish Bank of Porto Rico) be, and the said institution is hereby, authorized and empowered to amend article one of its by-laws, which said by-laws are referred to in, and published with, the royal (Spanish) decree dated May fifth, anno Domini eighteen hundred and eighty-eight, granting a concession to said bank, so as to change its name to that of Bank of Porto Rico (Banco de Puerto Rico) and to substitute for its capital in pesos the equivalent in money of the United States at the ratio established by law, and to amend article thirty-one of said by-laws, so that to be a councilor of said bank it may not be necessary to be a Spaniard, and further to modify and amend said by-laws, but always in accordance with existing law, and subject to the approval of the governor of Porto Rico: *Provided*, That nothing herein contained shall be held to enlarge or to permit the enlargement, in any manner or to any extent, of any of the rights, powers, or privileges granted to said Banco Español de Puerto Rico (Spanish Bank of Porto Rico) by the Government of Spain: *And provided further*, That nothing herein contained shall be held in any wise to limit or curtail any power which the Government or the Congress of the United States possesses in respect of said bank, its powers, privileges, or franchises.

Approved, June 6, 1900.

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26720—S. Doc. 200, 60-1——12

60TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 203.

MESSAGE OF PRESIDENT RELATING TO PENSIONS FOR LIFE-SAVING SERVICE.

MESSAGE

FROM THE

PRESIDENT OF THE UNITED STATES,

RELATING

TO THE PROVISION OF PENSIONS FOR MEMBERS OF THE LIFE-SAVING SERVICE.

JANUARY 28, 1908.—Read; referred to the Committee on Commerce and ordered to be printed.

To the Senate and House of Representatives:

In my first annual message to the Fifty-ninth Congress I called attention to the desirability of legislation providing pensions for members of the Life-Saving Service when they become incapacitated for duty by reason of disability incurred in service. I said:

> I call your especial attention to the desirability of giving to the members of the Life-Saving Service pensions such as are given to firemen and policemen in all our great cities. The men in the Life-Saving Service continually and in the most matter-of-fact way do deeds such as make Americans proud of their country. They have no political influence, and they live in such remote places that the really heroic services they continually render receive the scantiest recognition from the public. It is unjust for a great nation like this to permit these men to become totally disabled or to meet death in the performance of their hazardous duty and yet to give them no sort of reward. If one of them serves thirty years of his life in such a position, he surely should be entitled to retire on half pay, as a fireman or policeman does, and if he becomes totally incapacitated through accident or sickness or loses his health in the discharge of his duty he or his family should receive a pension, just as any soldier should. I call your attention with especial earnestness to this matter because it appeals not only to our judgment but to our sympathy, for the people on whose behalf I ask it are comparatively few in number, render incalculable service of a particularly dangerous kind, and have no one to speak for them.

The need for some appropriate legislation for the relief of this body of men has not become less. It has, on the contrary, increased and will steadily continue to grow until relief is granted. The determination of what course will best secure the desired end involves two important considerations. One has to do with the efficiency of the Service itself and the other—which I think should appeal to the Congress

with equal force—directly concerns the welfare of the members of the life-saving crews when disability incurred in the line of duty has impaired their usefulness.

The exigencies of the Life-Saving Service require the employment of the hardiest men it is possible to enlist in the station crews, and at the same time forbid that considerations of humanity should influence their retention in the ranks when their bodily vigor has become impaired, however ill fitted they may be to secure a livelihood for themselves and their families.

During the last several years the members of the station crews have given up their places in large numbers to seek employment where the work is less exacting and hazardous, the compensation larger, and the prospect for the future brighter. The exodus of these men, in many instances after long service, has embarrassed the work of the life-saving establishment to a marked degree.

A few years ago, when the demand for labor was less than at present, the Service had the pick of the coast fishermen, a class who were especially expert in surfmanship. As the station crews have been depleted, it has become necessary, under the changed industrial conditions, to take on men of less experience in the handling of boats, and unused to the concerted action of the fishing gangs from which their predecessors were largely recruited. The once excellent team work of the life savers—so important where combined physical effort is required—has consequently deteriorated and the former standard can not be regained in the present circumstances. Of late it has been found practically impossible to secure material of any kind for recruiting the crews at many of the stations. For instance, the records show that at one station there is but a single regularly enlisted man, and at several but two. In one district only 2 out of 11 stations have full crews of regulars, in another but 2 out of 17, and in still another only 6 out of 14. In fact, nearly all the 13 districts of the Service are seriously crippled in this respect, and the eligible lists from which the crews must be selected are wholly insufficient to fill the vacancies occurring. A list recently furnished by the Civil Service Commission shows for one district but 6 eligibles and for another 9, in which there are, respectively, 23 and 30 vacancies to be filled.

The only thing the Service has been able to do in this situation is to pick up at random for temporary service men who are unemployed at a season of unprecedented demand for labor. The very fact that these men can be obtained by such inducements as the Service is at present able to hold out is sufficient proof of their unsuitability for a vocation requiring exceptional energy and courage.

That the Service has not yet been chargeable with serious loss of life in consequence of this state of affairs is due to fortunate chance and also to the fact that the introduction of recent great improvements in life-saving appliances has afforded the means to accomplish rescues which formerly would have been impossible. But the indefinite continuance of good fortune can not be hoped for, and occasions may be expected to arise when even improved appliances will not redeem the deficiencies of the men who are charged with their operation.

No one will deny that the conditions set forth call loudly for correction. The remedy should be to establish such conditions as will attract and retain men of the highest qualifications and character and also safeguard the future welfare of the veteran surfmen who have been and are still the bulwark of the Service.